

Complaint

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IN THE MATTER OF

GRADY L. RUSHING
DOING BUSINESS AS MARCEL COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 8138. Complaint, Oct. 12, 1960—Decision, Nov. 27, 1961*

Order requiring a New Orleans seller of correspondence courses on civil service preparation to cease making false job-assurance claims, representing falsely connection with the U.S. Civil Service, and simulating court summons and complaint to collect unpaid balances, among other unfair practices as set forth in detail in the order below.

As to the remaining respondent, Claude I. Woolwine doing business as Universal Training Service et al., the proceeding was disposed of by consent order Sept. 28, 1962, 61 F.T.C. —.

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 Claude I. Woolwine, doing business as Universal Training Service, and Grady L. Rushing, doing business as Marcel Company, 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Claude I. Woolwine is an individual doing business as Universal Training Service, with his office and principal place of business located at 150 Powell Street, San Francisco, California.

Respondent Grady L. Rushing is an individual doing business as Marcel Company, with his office and principal place of business located at 8210 Hickory Street, New Orleans, Louisiana.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of a course of study and instruction purporting to prepare purchasers thereof for United States Civil Service examinations and positions with the United States Government, which said course is pursued by correspondence through the United States mail. Respondent Grady L. Rushing, doing business as Marcel Company, has a contract with respondent Claude I. Woolwine, doing business as Universal Training Service, to supply said course of instruction to respondent Rushing's customers and for the grading of papers in connection

therewith. In the course and conduct of their said businesses, respondents cause said course to be transported from respondent Woolwine's place of business located in the State of California to purchasers from respondent Rushing who are located in other states.

There has been at all times mentioned herein a substantial course of trade in said course of instruction so sold and distributed by respondents in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In connection with the sale of said course of instruction, respondent Claude I. Woolwine participates and cooperates with respondent Grady L. Rushing in the promotion by respondent Rushing of the sale of the aforesaid course of instruction to prospective students in the several states in which said course is sold by him. Said participation and cooperation is by various means, including, but not limited to, the furnishing to respondent Rushing sample advertisements which have been used by him, in and by which statements are made in regard to said course and matters and things connected therewith. Typical of the statements made in said sample advertisements furnished and used, as aforesaid, are the following:

GET A CIVIL SERVICE JOB—Train Now, Exams coming up. Men and Women Ages 18-50—Many Opportunities—Good Pay—Vacation—Sick Leave, No Lay Offs—Retirement Benefits. For FREE brochure listing Job Salaries * * *.

In connection with the sale of said course of instruction, respondent Claude I. Woolwine furnishes copies of the brochure referred to in the aforesaid advertisement to respondent Grady L. Rushing, with other promotional material printed to his individual order, which brochure and other material have been and are used by respondent Rushing in soliciting the sale of said course. Among the typical, but not all inclusive, of the statements made in the said brochure and other material are the following:

Now is the most opportune time to start preparing for a Civil Service position. Written examinations will be held for many permanent Civil Service Jobs, and both veterans and non-veterans will be eligible for appointment.

* * *

THE BEST WAY TO GET AN APPOINTMENT IS TO PREPARE WITH OUR TRAINING SERVICE AND STAND AMONG THE HIGHEST ON THE GOVERNMENT EXAMINATION.

* * *

Whichever job you pick, we will coach you for it successfully * * *.

* * *

* * * A personal appointment is necessary to determine your qualifications. If you qualify, you will be accepted for training. * * *

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* * * Check two or three positions before he (our field counselor) calls. He will let you know whether or not you can qualify.

Said brochure and other material list positions for which the course purports to train persons and the salaries for such positions.

Respondent Claude I. Woolwine further cooperates with respondent Grady L. Rushing by furnishing printed application blanks, with respondent Rushing's trade name printed thereon, which are used by respondent Rushing in connection with the sale of said course. Among and typical, but not all inclusive, of the statements appearing in said application blank, which is executed by the purchaser of said course, is the following:

CONTINUOUS TRAINING UNTIL I AM APPOINTED. Should I fail to pass the first examination taken, I am to receive, without further payment, training until *I RECEIVE MY APPOINTMENT*.

PAR. 4. By means of the statements appearing in the advertising material, brochure, application blank, and other promotional material, respondents have represented, and are representing, directly or by implication, that:

1. Civil Service examinations are imminent for all of the positions listed in the brochure, in the areas in which the advertisements set out in Paragraph Three are circulated.

2. The completion of the course of instruction offered by respondents will enable a person to pass the Civil Service examination for the job selected.

3. The school trains the applicant for the position or positions he selects.

4. The course is sold only to those who qualify.

5. The starting salaries for the positions listed are those set out in the brochure and other material.

6. The respondents will continue to instruct persons who have completed said course of instruction until they are appointed to a Civil Service position.

PAR. 5. The aforesaid statements are false, misleading and deceptive. In truth and in fact:

1. Civil Service examinations had not been announced for any of the positions listed in the brochure in many of the areas in which said advertisements were circulated.

2. The completion of the course of instruction offered by respondents by a purchaser of such course of instruction would not necessarily prepare him sufficiently to pass a Civil Service examination.

3. Respondents have only one course, and it does not train persons for any particular position.

4. Respondents, in selling the course, have no requirement that any qualifications be met other than subscribing and paying for the course.

5. The salaries indicated are not the starting salaries for the positions listed.

6. Respondents do not continue to instruct those who have completed the course of instruction until they have been appointed to a Civil Service position.

PAR. 6. In the further course and conduct of the said business as aforesaid, respondent Grady L. Rushing and his sales agents and representatives have orally stated, represented and implied to prospective purchasers of said course of instruction that:

1. The purchasers of said course will be notified when and where examinations will be held.

2. The purchaser of said course will be trained specifically for such work as:

- (a) Border Patrol;
- (b) Livestock Inspector;
- (c) Immigration Inspector; or
- (d) Library Assistant.

3. Persons completing the course and passing a Civil Service examination are assured of obtaining United States Civil Service positions.

4. Respondent, his agents and representatives are connected with the United States Civil Service Commission or a branch thereof, or some other agency of the United States Government.

PAR. 7. The statements, representations and implications set out in Paragraph Six are exaggerated, false, misleading and deceptive. In truth and in fact:

1. Respondents do not notify the purchasers of the course of instruction when and where the examinations are being held.

2. The purchaser of the course is not trained for any specific type of work.

3. The completion of respondents' course and the passing of a Civil Service examination are no assurance of obtaining a United States Civil Service position.

4. Respondent Grady L. Rushing, his agents and representatives are not connected with the United States Civil Service Commission, a branch thereof, or any other agency of the United States Government.

PAR. 8. Respondent Grady L. Rushing, in the course and conduct of his business, and in an effort to enforce collection of claims arising out of the agreements entered into with the purchasers of the

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said course of instruction, has devised and used a series of forms which have the capacity to mislead said purchasers into the mistaken belief that they were being sued for the outstanding balances allegedly due on their accounts, and cause such purchasers, in their mistaken belief, to pay such amounts. One of said forms, consisting of two pages, is attached hereto and marked Exhibit A-1 and A-2.

FINAL
NOTICE TO DEBTOR

COLLECTION—PROCEEDINGS

CREDITOR
vs.
DEBTOR
AMOUNT \$ _____

IMMEDIATE SETTLEMENT
OF THIS CLAIM
SAVES ADDITIONAL COST

Note: To settle this without further cost remit full
amount direct to Creditor.

EXHIBIT A-1

FINAL
NOTICE TO DEBTOR

IN THE CLAIM OF	CREDITOR
	vs.
	DEBTOR

You are hereby advised, informed and notified that a VALID CLAIM against you for the sum of \$_____ is substantiated by the following:

1. The contract which you signed states very clearly that this contract is not subject to cancellation by EITHER party.

2. This contract stipulates that how quickly or slowly you study or send in your lessons does not affect in ANY way your obligation to the CREDITOR.

3. This contract further stipulates that default in payment at any time will cause the ENTIRE UNPAID BALANCE to become due and payable.

Action will be held in abeyance for 5 DAYS, giving you an opportunity to pay IN FULL DIRECT TO THE CREDITOR.

Failure to respond will force procedure WITHOUT FURTHER NOTICE.

CREDITOR OR AGENT

Subscribed and affirmed before me
this _____ day of
_____ 196__

NOTARY PUBLIC OR WITNESS

CP2

EXHIBIT A2

PAR. 9. In the course and conduct of his business, respondent Claude I. Woolwine solicits salesmen to sell his course of instruction by advertising in various newspapers and nationally distributed magazines. Among and typical of such advertisements, but not all inclusive, is the following:

Educational Salesmen—\$1200-\$1800 average monthly earnings. Operate Home Study school. Details: * * *.

PAR. 10. By and through the statements in said advertisement, and others of like import and meaning not specifically set out, said respondent represented that a person can earn an average of \$1200-\$1800 a month in selling the course of instruction and that he will operate a home study school.

In truth and in fact, such earnings from the sale of respondent's course are not achieved by such salesmen and further, such salesmen do not operate home study schools.

PAR. 11. In the course and conduct of their business, the respondents are in substantial competition in commerce, with corporations, firms and individuals who sell correspondence courses similar to those sold by respondents.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true, and to induce a substantial number thereof to subscribe to and purchase said course of instruction, to pay for said course in the incorrect belief that they were being sued for said payment and to

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become employed as salesmen, by reason of such erroneous and mistaken belief. As a consequence thereof, trade in commerce has been, and is being, unfairly diverted to the respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 13. 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 constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Harry E. Middleton, Jr., for the Commission.

John E. Jackson & Baldwin J. Allen, by *Mr. John E. Jackson, Jr.*, New Orleans, La., for respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

By a complaint issued October 12, 1960, the Federal Trade Commission charged Claude I. Woolwine, doing business under the firm name and style of Universal Training Service, and Grady L. Rushing, doing business under the firm name and style of Marcel Company, with violating the Federal Trade Commission Act by engaging in unfair and deceptive acts and practices and unfair methods of competition in commerce in connection with the sale and distribution "of a course of study and instruction purporting to prepare purchasers thereof for United States Civil Service examination and positions with the United States Government."

Both duly appeared herein and were represented by counsel. Issue was joined by the filing of a separate answer on behalf of each. After a pretrial hearing, notice was issued directing that the case proceed to hearing at New Orleans, Louisiana, on the 15th day of May, 1961. Just prior to the time so scheduled, after all arrangements had been made, Woolwine suffered a series of heart attacks and, after motion made on his behalf, I issued an order severing the proceeding as to him and directing that it go forward against Rushing, who hereafter sometimes is referred to as the respondent. Consequently, this decision is concerned only with him, disposes only of the issues in which he is involved and leaves completely undisposed all charges affecting Woolwine. The hearing of the charges against respondent Rushing has been held. Requests to find and arguments in support thereof have been filed by both counsel. Opposition to these also has been filed. The case is now fully submitted.

Persons whose interest in obtaining employment in the United States Civil Service is aroused by the respondent necessarily will

form opinions about it. It is desirable and important that the Service be regarded with esteem and held in high regard. If the acts with which the respondent has been charged actually were committed and persons had been led to believe that he was associated with the Civil Service Commission, their regard and esteem for the Service would be adversely affected. For this, and other reasons, this proceeding is fraught with great public interest.

Many of the difficulties which respondent had with customers were caused, no doubt, by letters written by Woolwine (with whom the respondent had had a contract for the giving of the courses sold by him) after the termination of Woolwine's contract with respondent. In arriving at my ultimate findings and conclusions, I have taken into consideration these difficulties, but have concluded that the determinative facts involved in this proceeding do not rest upon these difficulties. I have concluded also that respondent Rushing could have taken measures for the solution of these difficulties but did not. Moreover, the matters in issue between Woolwine and Rushing, to the extent that they involve a personal controversy between them, are irrelevant to this proceeding and their respective merits are not at all involved herein.

Respondent asserts that he is engaged in the sale of education. Whether this is so depends to a large extent on what one regards as the meaning of education. His operation is not at all that of an educational institution. What he sells consists mainly of practice exercises or tests designed to refresh the user in the common branches and elementary skills. These exercises and tests are supplements with some text material and the entire product is reproduced by an office-type duplicating machine. Subscribers receive the so-called lessons in the mail in installments and they in turn, after completing the exercises or tests, send them back to the respondent. When they are returned to the respondent, they are graded according to keys or mechanical arrangement of multiple choices by ordinary clerical help. If the subscriber attains a "passing grade," the papers are returned to him and the next set of exercises or tests is sent at the same time. The process continues until the entire "course" has been completed in this manner. If this undefined "passing grade" is not attained, the papers are sent to an individual, who has no training in education, for transmission to the so-called Educational Director who may send supplemental material to the failing subscriber. There also is some "spot checking" of the initial grading. The subscriber works on the material sent to him at any place convenient to him—his home, or place of

employment or elsewhere. There is no supervision of the manner in which the work is performed and no one cares or is concerned. Whether the subscriber takes ten minutes or ten hours to perform a test or exercise, whether he does it relying solely on his own knowledge and the text material furnished or whether he gets assistance from others or by reference to source books and dictionaries does not appear and is not a factor in determining whether he has truly achieved a "passing grade."

The quality of the materials has not been made the subject of critical testimony or evaluation. A cursory examination of them persuades me to the conclusion, having in mind the testimony of the Commission's witnesses, an official of the United States Civil Service Commission, that the material could be of help to persons preparing to take Civil Service examinations. Although I make this observation, I do not find that the material does, in fact, prepare anybody to take and pass an examination or to qualify for a position.

Prior to September or October 1960, the material was prepared and distributed by Woolwine, as the so-called Instruction Department of the respondent's business. Following the breach between them, respondent hired the Educational Director. In determining the qualifications for that position, respondent specified no qualification in pedagogy. She had completed no courses in education and has had no experience in teaching. As a matter of fact, neither the respondent nor any of the so-called educational counsellors, the graders or anyone else in respondent's employ, has any qualifications in the field of education or any training to teach.

Salesmen in the field, that is to say, the representatives who, following inquiries induced by respondent's advertising, endeavor to sell the "courses" to the inquirers are called educational counsellors or counsellors. The fact is that they do not counsel at all. They know nothing about education. Their only objective is to sell respondent's courses and to get as large a down payment as possible because their commission and rate of compensation is dependent thereon. The training and instructions which these salesmen receive from the respondent will be indicated by material to be quoted below. Here it need be observed only that they are selected primarily because of their probable sales ability without regard to their educational qualifications either from the viewpoint of their own learning or their ability to instruct or counsel young people desiring to enter the Civil Service. Although, in his literature, respondent says that the qualifications of potential subscribers will be considered before they are permitted to enroll, these salesmen have no knowledge of the requirements for Civil Service positions and respondent provides

them with no information as to the qualifications necessary before a person is permitted to take any examination for employment in the Civil Service.

As will appear from the material to be quoted below, these salesmen are instructed practically to hypnotize potential buyers of the courses. In many cases, buyers do not, or are not permitted to, read the contract. If the contract is read to them, it is often read partially rather than *in toto* and the reading is quite rapid. Illustrative material supplied by the respondent containing assurances, inducements and glamorous descriptions of jobs in the Civil Service is referred to only in highlight fashion and carefully kept out of the physical reach of potential subscribers.

On the matter of examining potential subscribers as to their qualifications, reference may be made to the fact that respondent gets thousands of leads from answers to his advertisements and from lists of high school graduates. In preparation for the hearing, respondent culled through *ten thousand* salesmen's reports on leads which did not materialize in sales. He was able to turn up only about twelve leads which he offered in evidence. Those do not indicate that the rejections were because a lead was found not to be qualified to take a Civil Service examination (unless a rejection of one or two turned down because they were too old could be so regarded).

My findings concerned with the literature or materials used by the respondent are amply supported by documentary exhibits contained in the record. The ultimate meaning of the statements made in the exhibits coupled with the oral presentation by respondent's salesmen is not open to doubt. Neither is it open to doubt that persons solicited believed and were led by respondent's salesmen to believe the various promises and representations made to them. A question asked by respondent's counsel of one of his witnesses, the objection to which on the part of Commission counsel was sustained, suggested that the salesmen, in the heat of endeavoring to make a sale, very well might make representations and promises which were not true. (That this is and was a likely happening ought to be apparent from the material quoted below.) It is elementary that respondent cannot claim immunity from the representations made by the salesmen employed by him. To the extent that such salesmen made false representations and statements over and above and beyond those contained in the written materials supplied by respondent himself, the respondent is bound thereby.

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Yet, when respondent was asked if any salesman ever had been discharged for misrepresenting, the answer was in the negative.

The assurance of continual training of subscribers until such time as they pass Civil Service examinations is completely misleading. Not only is no such continual training given, but respondent testified that he does not know how many subscribers, if any, ever obtained any Civil Service jobs.

Respondent's main concern and preoccupation is not education or the welfare of his customers. He is concerned primarily with the pushing of sales and the collection of payments. Nobody but the respondent or his wife has access to monies remitted. When payments come in they go directly to the respondent or his wife who takes possession thereof. Only the opened envelopes with notations as to the amounts of the payments and the payers are sent to a clerk who keeps a record thereof. The respondent's business is big. At the time of the hearing he had approximately 3,000 subscribers and the grand total of subscribers by then amounted to 15,000. He may deposit as much as \$3,000 in his bank in a single day and deposits aggregate over \$200,000 in a single year. The "course" itself sells for \$199.50. For this \$199.50, as noted above, the subscriber receives nothing but inexpensively duplicated tests and exercises supplemented by some text. In making his collections, respondent relies on scare techniques. He obtains payments in many cases because of the misunderstandings or fears of the debtors who are led to believe either that court actions are pending against them, that garnishment of their wages is pending or that the constable may come up and enforce payment. Although collection material and communications used by the respondent simulate court process and give the impression that court proceedings are pending or are imminent, respondent, when asked, stated that he had never sued any subscriber.

I shall not quote from the materials with respect to which I set forth findings of fact below. However, for the purpose of understanding better the findings and some of the remarks above made, I set forth in the footnote some bulletins or communications sent by respondent to his salesmen.¹

¹ Respondent's bulletin, May 16, 1960, CX 114 :

"BULLETIN

"As you go through your pitch, be sure to watch every expression they make. Moving in their chair is an expression, crossing their legs or uncrossing them is an expression. Using a handkerchief [sic] or Kleenex is expression. Any movement is an expression. WHAT A PERSON DOES NOT say tells you MORE than what they say lots of times. Brushing the hair on their head, rubbing their face, head, or neck will give you expressions. Frown, of any kind will show you what you want to know. These are all signs they are

Considering this sort of pressure, it is not surprising that so many of the subscribers, called to give testimony herein, who obviously never should have been sold the courses, bought. Several were hopelessly and clearly not fitted for or capable to attain appointment in the Civil Service. On the other hand, they were particularly susceptible to the lures, blandishments and pressures utilized in inducing the sales.

In making my findings and conclusions I have not relied solely on the supporting references of Commission counsel. He could have set forth additional citations to the record. In addition to the testimony as reported and the exhibits, I rely also on my impressions of and judgments on the witnesses. At least two of the witnesses called by the Commission counsel were definitely, in my opinion, not reliable, but the overall weight and substance of all the testimony have persuaded me to make the findings below. Respondent's counsel criticizes Commission counsel's use of the Commission's press release in communications to witnesses prior to the hearing. While I am not satisfied that this is a desirable procedure, particularly since there were some very significant underlinings of portions of the releases transmitted, it was not brought out on the hearing and it does not appear that the witnesses whose testimony I have ac-

giving you without realizing this at all. Be sure to not watch for them but recognize them when you see them. Then, do something about them. For instance, something you get a smile out of, REPEAT. Something you get a frown out of—shy away from. People like to hear good things so repeat them so they will be impressed. Stress or repeat will tend to put value on things. Knowing what to stress and when to stress it, will give you the sale. A salesman has to be alert at all times. A sale can be lost by the twinkle of the eye. A glance away from the prospect could cost you that sale. You can sell anybody if you are careful and watch the reactions you cause in a person. If you are not closing half of your calls, something is wrong. YOU CAN NOT SELL ON THE PHONE."

"HOW CAN I IMPROVE MYSELF?"

His bulletin of August 1, 1960, CX 115:

"First go through the 'Pitch' word for word. Do not add or take away a single word. This pitch is written in simple everyday language that is very meaningful. By adding more words you will confuse and give too much information. By taking a word off you don't give enough.

"Do not open your briefcase until you get to the part, 'Mrs. Jones, let me show you what you might qualify for'. Then bring out the opportunity sheet, and read to her exactly as outlined in the pitch—put the opportunity sheet up at once—DO NOT GIVE, OR LET THEM HAVE THIS AT ALL. This is the one and only time they see this. The next thing you bring out of your brief case is the enrollment agreement and read to them, 'There are to be—' Leave this out on the table or chair where they will be able to see it. When you tell her your job is to approve or disapprove her back to the school—MEAN THIS. From then on you talk of MONEY, FUTURE, FAMILIES FUTURE, BETTERING themselves. 'How close to \$175.00 can you come Mrs. Jones?' will bring you lots of money. When she ask [sic] how does a person usually pay—tell her at once—Most pay cash when they are able—Thus saving \$24.50. 'How close can you make it?' If she says \$50.00 now, tell her to give you the \$50.00 and a check for balance of \$125.00. If she says she does not have a check account, then say—if you will give me \$75.00, I'll make your payments \$5.00 weekly. Every sale should have a different down payment. \$75, \$26, \$56, \$19, \$11, \$4, \$2.50 or \$1.50 should be what you get. If you always get \$10, or \$25 it shows us that you are only asking for that amount. Get EVERY PENNY down that you can. One out of 10 sales should be for cash, 3 or 4 out of 10 should be for \$50 to \$75 down. 3 or 4 should

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cepted were influenced by these communications or that the testimony given by them was induced by the contents of the releases.

The various motions made on behalf of the respondent to dismiss the complaint are denied. I shall refer briefly to what is involved on these motions. In my opinion, the evidence to support the relief sought is substantial, reliable and probative. While some of the evidence reflects events which occurred after the filing date of the complaint, this evidence did not change the gravamen of the complaint. That was concerned not with particular *events* but with *practices*. The evidence was illustrative only of the practices against which complaint was made. It is significant that such practices continued even after service of the complaint. Respondent's counsel says that the evidence was given by persons with "unclean hands." At worst, some of the witnesses could be said not to have made the payments called for by their contracts, but this proceeding was not concerned with whether contracts had been performed by subscribers except to the extent that those facts came out because respondent either induced the contracts by false representations or failed to perform his obligations thereunder. In any event, the equity rule to which respondent's counsel refers is not correctly stated nor would it be applicable herein if it were. The Commission's practice of issuing press releases is not a basis for

be between \$25, and \$50. Follow the above and you will find your fronts increasing daily. Do not get in a discussion about what the job consist [sic] of, nor what our course consist [sic] of. Tell them the Government trains them the way they want them trained after they get the appointment. We train for test only. Do not discuss when, where, and what job is going to be open—YOU ARE SELLING EDUCATION, first, last, and always. Follow the above, and put them on a weekly basis of about \$5.00, starting within about 10 days from date of contract, telling them as you leave, 'Mrs. Jones if you are not going to study, tell me now because you will have to pay regardless of your rate of study,' and you will increase your income starting NOW. No matter what you have been doing follow this—it means MORE MONEY. We have the BEST setup for any salesperson in the country. Cooperate with us, and we will go all out to make your stay lasting and profitable."

His bulletin of September 19, 1960, CX 117:

"Every person you see will give you excuses as to why they 'Can't act now.' You will find that usually they fall into the same line of thought. 'I want this program because it is a wonderful program but I want to wait. I just don't have the money now but if you will come back in about a year, I'll be ready.' If you know ahead of time before you see them—that this will be their excuse, why not eliminate it before they are able to give you such? Would not this be the best idea? If you KNOEW [sic] somebody was going to hit you on the head every time you see them, would you prepare yourself for this? Sooner or later you would find a way to protect yourself. I'm SURE. You would keep practicing, planning, thinking of ways to keep from being hit. 'Self preservation is the first law of nature.' Protect yourself against excuses BEFORE you get them. Do not fall into this trap. Do not even listen to them. Eliminate each one BEFORE they are able to tell you. HOW!!! Very Simple. If you told them BEFORE THEY could even give you a single one, that your job is to call or weed out curiosity seeds, fly-by-niter, nosey people, sight-seers, lazy people, non-ambitious people, people trying to find an excuse to keep from improving themselves, people with no feeling for their family, and their future, people that want time to think it over, people [sic] who don't know what they want and care less, people who don't [sic] make much effort to get the money. Tell them this BEFORE they can give you ANY excuse. Let them know YOU are there to approve, or disapprove them. You are there to see if they qualify. You are ther[e] to see if MARCEL COMPANY

concluding that the respondent has been prejudiced thereby and thus has not received "a full and fair hearing." In addition to the reference heretofore made to the press release, it may be observed that the case was not heard on the basis of press releases but upon (a) documentary materials which emanated from the respondent; (b) oral testimony which was subject to cross-examination and contradiction; and (c) full opportunity to the respondent to offer whatever explanations or defenses he might have had both by way of his own testimony and by way of testimony of witnesses produced and selected by him. Finally, the trade practice rules to which respondent refers have no bearing on whether the respondent committed the acts with which he is charged herein.

To the extent that the findings hereinafter set forth do not follow those requested by counsel for the Commission, such requests are denied. For example, I am not at all satisfied that respondent has misrepresented the potential earnings in or starting salaries of Civil Service positions. Some of the findings made are not substantially at variance with some requested on the part of the respondent. However, other of the findings requested by respondent are irrelevant or are not supported by the evidence herein. Those findings and the proposed conclusions of law submitted on behalf of the respondent, not found in substance, are denied.

'Wants' them. Tell them that you are the one to decide—not them,—whether you will approve or disapprove them. Tell them Marcel Co. does NOT want them if they have excuses. Your time is too valuable to waste on loafers, putter offers, excuse finders. You are ther[e] with a mission to do and a limited amount of time to accomplish it. Try this line of thinking and talking and see how it comes about. Try this and prove me wrong? Its worth it."

"WHAT IS YOUR EXCUSE?"

And his bulletin of February 27, 1961, CX 126, long after the filing of the complaint herein :

"WHY DON'T YOU MAKE MORE MONEY

"Upon entering a home, we should ALWAYS remember that the FIRST IMPRESSION is the LASTING IMPRESSION. Be sure you conduct yourself in a businesslike way. Get friendly enough to command respect then go to work. Be sure you have the right person on hand. Be sure you are talking to the person THAT CAN BUY. Do not waste a good lead by trying to make an easy sale just because you are there. Do not go through your pitch unless you have ALL the odds on your side. Trying to sell a minor alone, is wrong. You are not only cheapening yourself, and Marcel Co., but costing your family good money. Trying to make a sale at their place of business is wrong—wait until you can get things on your side. Wait until you have your way. If they have company or friends over, you should come back. Trying to sell there in front of OTHER people is wrong. Be courteous at all times. Be sure you COMMAND and not DEMAND. There is a great difference. Be a leader and not a dominating person. Be a good listener when it is their turn to talk—at first. Be a good talker when it is your turn—Be sure you don't DRIFT from your 'pitch'. Be sure you don't let them in the drivers seat. Be sure you keep control at all times. Be sure you are watching the faces of all. Be sure the RIGHT person is being sold. Be sure you stay on the subject. Be sure you know when to 'shut up', and ask for the money. Be sure you don't come down too fast on the money. Remember some people have the money, and can pay cash."

"ARE YOU ALWAYS ALERT?"

The following are my

FINDINGS OF FACT

1. The respondent, Grady L. Rushing, is an individual engaged in business under the firm name and style of Marcel Company, at 8210 Hickory Street, in the City of New Orleans, Louisiana. In the course and conduct of said business he utilizes a post office box for the receipt of mail and at the present time he is utilizing Post Office Box No. 1378, New Orleans, Louisiana.

2. The business so conducted by the respondent at the present time and for three years last past is the sale and distribution of materials which he represents will prepare purchasers thereof (a) to take and pass certain United States Civil Service examinations and (b) for employment in certain positions in the United States Civil Service.

3. The materials offered by respondent are distributed by him through the United States mails to subscribers therefor to be studied and worked on by them at their homes or other places convenient to them.

4. The materials are sold and distributed by the respondent in many states of the United States and he has conducted for that purpose substantial trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

5. For the purpose of promoting sale of said materials, the respondent hires and instructs a large number of sales persons, who in turn are organized into units or groups, supervised and assigned to district managers, also hired and instructed by him.

6. He has utilized and engaged in newspaper and radio advertising for the purpose of soliciting subscribers and to obtain "leads" to be solicited by the sales persons employed by him.

7. He has prepared or obtained contract forms and miscellaneous literature which he has furnished to sales persons for the purpose of assisting them in, and promoting, sales of such materials to persons who have been led by respondent's advertising to apply to the respondent for, and to request information about, Civil Service positions and training offered for such positions.

8. In and by such advertising, literature and contract forms, the respondent has represented and caused to be represented to persons solicited by him and by the sales persons employed by him for that purpose that:

(a) examinations are about to be given in the areas of solicitation for Civil Service positions listed therein;

(b) persons who complete the materials (called courses) offered

by him will be able to pass Civil Service examinations for the positions selected by them;

(c) he trains applicants for the positions selected by them;

(d) only persons found qualified for the positions selected by them will be permitted to subscribe for such training; and

(e) persons who subscribe for and complete "courses" will receive continual training until appointed to Civil Service positions.

9. The representations so made by the respondent are false, misleading and deceptive because:

(a) Civil Service examinations for many of the positions so set forth had not been announced in areas where such solicitation had been made;

(b) mere completion of so-called "courses" offered by the respondent does not assure that persons so doing will be able to pass Civil Service examinations for the positions represented by the respondent to be the subjects of such "courses";

(c) while some of the materials recently utilized by the respondent are aimed at particular skills in particular positions, such training as is and has been provided is and was in most instances purely general and does not provide training for any particular positions;

(d) in rare instances where the evidence discloses that sales persons employed by the respondent inquired of persons solicited as to their background, skills and education, such inquiries were perfunctory and not truly designed to determine qualifications for any particular position and, in fact, such sales persons were not informed of, did not know and were unable to inquire about the qualifications required for the positions which were represented as the objectives of the training offered, and did not ascertain or determine whether persons solicited had the qualifications required for such positions; and

(e) respondent did not provide continual training to subscribers until they were appointed to Civil Service positions.

10. The respondent, by sales persons employed by him, has stated, represented and led persons solicited by them to believe that:

(a) subscribers would be notified of the times and places when and where examinations for the positions selected by them would be held;

(b) subscribers would be specially trained for the positions selected by them;

(c) subscribers who completed the so-called "courses" selected by them and passed the Civil Service examinations for the positions so selected were assured of obtaining positions in the United States Civil Service; and

Conclusions

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(d) the respondent and his sales persons were connected with the United States Civil Service Commission.

11. Such representations and the conduct and remarks which led the persons solicited so to believe were false, misleading and deceptive because respondent:

(a) did not notify and had no practice or facilities to notify subscribers of the times and places when and where any Civil Service examinations would be given;

(b) did not specially train subscribers for positions selected by them;

(c) no person is assured of a Civil Service position merely because he passes a Civil Service examination; and

(d) neither respondent nor any of the sales persons employed by him is employed by or connected with the United States Civil Service Commission.

12. In the course and conduct of his business, for the purpose of enforcing payment by subscribers for the materials sold by him, the respondent has devised and used miscellaneous forms and techniques which were calculated to and did tend to lead many such persons to believe that court proceedings were pending or had been completed for the compulsory collection of outstanding amounts sought to be collected by him when, in fact, no court proceedings were pending and none had been completed; one particular paper used by respondent having been made to simulate a summons and complaint and other papers and oral communications threatening garnishment of wages although no court action had been brought and no judgment obtained.

And, from the foregoing, and upon all the evidence herein, the following are my

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of both the subject matter of this proceeding and of the respondent.

2. This proceeding is in the public interest.

3. The respondent disseminated and caused to be disseminated false advertising in commerce and made and caused to be made false representations in connection with and for the purpose of promoting the sale of and selling of the materials offered by him. Such activity constitutes unfair and deceptive acts and practices in violation of the Federal Trade Commission Act.

I have given consideration, as above noted, to the fact that transmission or delivery of materials sold by respondent was interrupted because of his controversy with Woolwine and to the fact that re-

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Order

spondent has caused to be prepared a complete new set of materials now being offered by him. However, the nature of the representations made, the manner in which respondent always has conducted his business, his emphasis on indiscriminate sales without regard to the good which a purchaser might or could derive from the materials offered by him and his almost complete preoccupation with the collection of money claimed to be due from sales persuade me that the following order is necessary and appropriate.

ORDER

It is ordered, That respondent Grady L. Rushing, doing business as Marcel Company or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any materials or course of instruction, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. Civil Service examinations for particular positions described orally or in any writing have been announced or are about to be given in or for any geographical or United States Civil Service area unless such examinations actually have been announced or are about to be given in or for such area and adequate time remains for the filing of applications to participate in such examinations.

2. The completion of any series of materials or course of instruction offered by the respondent in commerce will enable a person to pass the Civil Service examination for the position selected by such person.

3. Respondent's materials or course of instruction provide training for Civil Service positions.

4. Persons solicited to purchase respondent's materials or course of instruction are examined or screened as to their possession of qualifications for positions to be sought before they are permitted to purchase such materials or course.

5. Respondent will continue to train or instruct persons who have completed a purchased series of materials or course of instruction until they are appointed to a Civil Service position or misrepresenting in any manner the extent or nature of instruction that he gives to purchasers.

6. Representing directly or by implication:

- (a) That purchasers of respondent's materials or course will be notified when or where examinations will be held:

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(b) That persons completing said materials or course of instruction and passing a Civil Service examination are assured of or will obtain Civil Service positions; or

(c) That respondent or his agents or representatives are connected with the United States Civil Service Commission or any branch thereof or any other agency of the United States Government.

7. Using any document that simulates a court process in connection with the collection of accounts from debtors; or using any other document or practice which may suggest or imply that a debtor is being sued when such is not the fact.

ORDER DENYING PETITION OF RESPONDENT GRADY L. RUSHING, AND
DECISION OF THE COMMISSION

The initial decision of the hearing examiner having been filed in this matter on September 29, 1961, and respondent Grady L. Rushing on October 30, 1961, having filed a petition for review of said initial decision apparently in the belief that such review would be governed by the requirements of § 4.20 of the Commission's amended and revised Rules of Practice, published July 6, 1961, and counsel supporting the complaint having filed an answer in opposition to said petition; and

It appearing that the reception of evidence was completed in this case prior to July 21, 1961, and that under F. R. Document 61-6766, published in the Federal Register on July 19, 1961, any appeal from the initial decision is governed by the Commission's Rules of Practice, published May 6, 1955 as amended, and that the amended and revised Rules of Practice, published July 6, 1961, are not applicable in any respect to the proceeding; and

It further appearing that the respondent has failed to file a notice of intention to appeal as required by § 3.22 of the applicable Rules of Practice, and that the petition for review, although filed within the time referred to in the amended and revised Rules of Practice, was not filed within the time permitted by the applicable rule for the filing of a notice of intention to appeal; and

The Commission having nevertheless determined that in the special circumstances a review of the entire proceeding in the light of the questions presented in the respondent's petition would be in the public interest; and

The Commission having made such review and having determined therefrom that no substantial grounds have been presented in the petition for modifying or setting aside the initial decision of the hearing examiner:

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Complaint

It is ordered, That respondent's petition, treated as an appeal, be, and it hereby is, denied.

It is further ordered, That the findings, conclusions, and order contained in the initial decision of the hearing examiner be, and they hereby are, adopted by the Commission.

It is further ordered, That respondent Grady L. Rushing shall, within sixty (60) days after service upon him of this order, file with