

otherwise, involving fabrics in their merchandise by altering the report of the test.

4. Furnishing means and instrumentalities to others whereby they may mislead the public as to any of the matters and things set out above.

IN THE MATTER OF
POST GRADUATE SCHOOL OF NURSING, INC., ET AL.
ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 8566. Complaint, Apr. 25, 1963—Decision, May 21, 1964

Order dismissing, for failure to adduce evidence with respect to the content and worth of the courses concerned, complaint charging Chicago sellers of home study courses with advertising falsely that their courses would make persons completing them proficient auxiliary nurses and qualify them to secure employment as auxiliary nurses.

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 Post Graduate School of Nursing, Inc., a corporation, and Herbert L. Kellner, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appear-

ing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Post Graduate School of Nursing, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 131 South Wabash Avenue, in the city of Chicago, State of Illinois.

Respondent Herbert L. Kellner is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of a correspondence course of instruction in auxiliary nursing. As used hereinafter the terms "auxiliary nurse" and "auxiliary nursing" shall mean or refer to all of those persons working in the nursing field below the level of a Registered Nurse and includes the job titles of practical nurse, nursing aide, hospital attendant, doctor's office nurse, baby nurse, nurse companion and other similar titles.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said correspondence course, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said correspondence course in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, at all times mentioned herein, the respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses of instruction in auxiliary nursing.

PAR. 5. In the course and conduct of their business, respondents have disseminated and caused the dissemination of advertisements and other promotional material describing and extolling their said course of instruction, by the United States mail and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in nationally circulated magazines, brochures, circulars and form letters, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said course of instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. By means of statements contained in said advertisements and promotional material, disseminated as aforesaid, the respondents have represented, directly or by implication:

1. That persons completing respondents' said correspondence course of instruction in auxiliary nursing will thereby have become and will thereby be proficient and competent in the performance of the duties and functions of an auxiliary nurse.

2. That persons completing respondents' said correspondence course of instruction in auxiliary nursing will thereby have become and will thereby be an auxiliary nurse.

3. That persons completing respondents' said correspondence course of instruction in auxiliary nursing will thereby have become and will thereby be qualified and enabled to secure employment as an auxiliary nurse on general or private duty with hospitals, sanatoriums, institutions, individuals or similar or related places of employment.

PAR. 7. In truth and in fact:

1. Persons completing respondents' said correspondence course of instruction in auxiliary nursing will not thereby have become and will not thereby be proficient or competent in the performance of the duties and functions of an auxiliary nurse.

2. Persons completing respondents' said correspondence course of instruction in auxiliary nursing will not thereby have become and will not thereby be an auxiliary nurse.

3. Persons completing respondents' said correspondence course of instruction in auxiliary nursing will not thereby have become and will not thereby be qualified and enabled to secure employment as an auxiliary nurse on general or private duty with hospitals, sanatoriums, institutions, individuals or similar or related places of employment.

Said statements and representations were, therefore, false, misleading and deceptive.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of said correspondence course from the respondents by reason of said erroneous and mistaken belief.

PAR. 9. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

ORDER DISMISSING COMPLAINT

On April 25, 1963, the Commission issued a complaint charging that respondents had violated Section 5 of the Federal Trade Commission Act (15 U.S.C. 41) by representing, falsely, that persons completing respondents' correspondence course would thereby (a) become and be proficient and competent in the performance of the duties of an auxiliary nurse, (b) become and be auxiliary nurses, and (c) become and be qualified to secure employment as auxiliary nurses. After hearings, the examiner filed an initial decision on February 13, 1964, in which he found the allegations of the complaint had been proved, and ordered respondents to cease and desist from engaging in the misrepresentations charged in the complaint. The matter is before the Commission on respondents' appeal.

The Commission, having considered the briefs filed and having heard oral argument, has concluded that the testimony upon which the examiner relied was too general and not sufficiently specific to serve as the basis for an order against respondents. In order to support a specific finding of violation that respondents' correspondence course was valueless and deceptively advertised, evidence should have been adduced with respect to the content and worth of that course. Our conclusion does not imply that the testimony of the witnesses adduced by complaint counsel is in any respect inaccurate or not to be credited; it is, rather, that such testimony was not sufficiently closely tied to respondents' course to furnish an adequate predicate for an order to cease and desist. By dismissing this complaint for failure of proof, we do not, of course, resolve any of the issues raised in this proceeding. Should any future action by the Commission against these respondents appear to be warranted, the disposition being made of this appeal will not stand in the way.

It is ordered, That the complaint be, and it hereby is, dismissed.

IN THE MATTER OF

ADAMS DAIRY COMPANY ET AL. AND THE KROGER CO