

IN THE MATTER OF
SCHOOL SERVICES, INC., ET AL.

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

Docket 8729. Complaint, Feb. 13, 1967—Decision, Oct. 4, 1971

Upon remand by the United States Court of Appeals, District of Columbia Circuit, 425 F.2d 583, and in view of the change in the composition of the Commission, an oral re-argument was ordered. The respondents, operators of a Washington, D.C., trade school and the school's franchisees, were ordered to cease misrepresenting that they extend loans to students, that the schools have any relation with the government, that the offered courses qualify students as airline stewardesses or buyers for retail stores, that respondents find jobs for students, using false inducements to obligate enrollees to pay money, and failing to furnish any franchisee with a copy of this order. The existing order against School Services, Inc., 74 F.T.C. 920, is dismissed and the motion of Vincent Melzac to dismiss complaint is denied.

OPINION OF THE COMMISSION

OCTOBER 4, 1971

This case is before the Commission upon the remand of March 20, 1970, by the United States Court of Appeals for the District of Columbia, of the Commission's decision and opinion of October 10, 1968, in the captioned matter. In view of the change in the composition of the Commission which took place subsequent to the Court's remand, the Commission decided that re-argument will better enable it, as now constituted, to carry out the Court's instruction to review the conclusions of the hearing examiner in light of all the evidence of record. Accordingly, by order of October 29, 1970, the Commission scheduled oral re-argument on the appeal by counsel supporting the complaint from the hearing examiner's initial decision for February 9, 1971. On January 26, 1971, respondents filed a motion to dismiss the complaint on the ground that the individual respondent, Vincent Melzac, had divested himself of any equity interest in the corporate respondents. In addition, Vincent Melzac filed an affidavit to the effect that he has completely divorced himself from the "school" business and does not have any present intention of returning to that business in the foreseeable future. Subsequently, during the course of oral re-argument before the Commission on February 9, 1971, counsel of record informed the Commission that he was appearing solely on behalf of the individual respondent, Vincent Melzac, but was no longer representing any of the corporate respondents. He

reiterated his position that the complaint against Vincent Melzac should be dismissed because he is no longer in the "school" business.

It has long been settled of course that abandonment of the challenged practices does not ordinarily bar the issuance of an order to cease and desist. In fact, in the very first Commission decision to be judicially reviewed after the enactment of the Federal Trade Commission Act, respondent unsuccessfully raised the issue of "abandonment" in an effort to avoid entry of an order, *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307 (7th Cir. 1919). Since then a long line of decisions attests to the validity of this rule. The last time this issue was litigated before the Commission was in *Consolidated Mortgage Company, et al.*, F.T.C. Docket 8723, issued February 19, 1968 [73 F.T.C. 376], [CCH 1967-1970 Transfer Binder] Trade Reg. Rep. ¶ 18,235. There the Commission held that "an order is justified in this case against the individual respondents in spite of the declared present intention of each not to re-enter such business at any future date" (at 20,623). On appeal this holding was specifically affirmed (*Lester S. Cotherman et al. v. Federal Trade Commission*, 417 F.2d 587, 595-96, (5th Cir. 1969)).

Particularly applicable to the instant proceeding is the holding in *C. Howard Hunt Pen Co. v. Federal Trade Commission*, 197 F.2d 273 (3rd Cir. 1952) in which the Court observed the following:

Petitioner alleged in its answer to the complaint that it has no intention of resuming that practice but there is no specific testimony to that effect. We see no reason why even if there had been the Commission would have been bound simply by the promise of the petitioner. Particularly is this true where petitioner's claim before the Commission and before this court has been that it was not guilty of any deception * * *. (at 281)

The same reasoning applies here and also particularly because of respondent's claim that he has not been guilty of any deception. Respondent's motion to dismiss the complaint is, therefore, denied.

With respect to the corporate respondents, the franchising corporation, Cinderella Career and Finishing Schools, Inc., The Stephen Corporation which operates a Cinderella Career and Finishing School, and School Services, Inc., a corporation which purchases student tuition notes, the Commission has before it the affidavit of the individual respondent, Vincent Melzac, dated January 26, 1971, and the affidavit of counsel supporting the complaint dated July 9, 1971, to the effect that these corporations are no longer in business. It is not known, however, whether these corporations have been dissolved or are merely dormant and thus capable of renewed business activity at any moment. On balance, therefore, it appears that the public interest requires that

these corporations, with the exception of School Services, Inc., be retained as respondents in this proceeding. For reasons stated in this opinion, the complaint against School Services, Inc., is being dismissed.

The complaint in this case charges the respondents with violations of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a)(1), in the operation of a finishing school. The complaint alleges that respondents disseminate false and misleading advertisements and engage in a variety of unfair or deceptive acts and practices in connection with the operation of their finishing school in order to enroll prospective students for one or more of the courses of instruction offered by respondents.

Specifically, the complaint includes allegations that respondents represent that they grant educational loans to students when in fact the student signs a negotiable installment contract; that respondents represent contrary to fact that their school or the courses it offers have been officially approved by a government or nonprofit organization; that respondents misrepresent that the school offers courses of instruction which will qualify students to become airline stewardesses or buyers for retail stores; that respondents misrepresent that in almost all cases they will find jobs for their students through their job placement service; and that respondents frequently represent, solely for the purpose of enrolling a prospective student in an expensive course of study, that such a course will enable the student, in most cases, to obtain a better job through respondents, when such is not a fact.

The proceeding involves three corporate respondents and the individual respondent Vincent Melzac. Cinderella Career and Finishing Schools, Inc. (Cinderella) is a corporation which franchises, for a fee, a system of operating and developing finishing schools. Its franchisees operate under the trade style of Cinderella Career and Finishing School or Cinderella Career College and Finishing School.¹

The Stephen Corporation (Stephen or "the school") operates a finishing school under the trade style of "Cinderella Career and Finishing School" or "Cinderella Career College and Finishing School" in accordance with a franchise from Cinderella. The Stephen Corporation's controlling stockholder was the individual respondent Vincent Melzac.

School Services, Inc. is a corporation engaged in the purchase of

¹ Cinderella supplies its franchisees with advertising material, some of which is in issue in this proceeding, curricula, manuals, instructional devices and related materials. Its sole stockholder was the individual respondent, Vincent Melzac.

student tuition notes from schools such as the one operated by the Stephen Corporation.²

The Cinderella Career and Finishing School, operated by the Stephen Corporation, offers such courses of instruction as "Executive Secretarial, Professional Modeling, Retail Fashion Merchandising, Self Improvement, Finishing," etc. The school is operated like any other commercial undertaking—it advertises in various media and uses sales representatives in its efforts to sell its services for profit. Its students are primarily young women around 18 years of age and older, but there is no age limit for the purpose of enrolling for a particular course of study. The length, and correspondingly the cost, of the courses varies.

A girl who has decided to enroll in the school signs a noncancellable enrollment contract either subsequent to an interview with a counselor at respondents' place of business or after an interview with one of respondents' sales representatives.

The school's curriculum is divided into "career courses" and "finishing courses." "Finishing" courses consist of instruction in how to improve a student's looks, speech, bearing, manner and poise—in short, how to improve a student's overall appearance. "Career" courses are designed to teach the students a specific skill such as secretarial, fashion merchandising, professional modeling, etc. All career courses contain a certain amount—and to a considerable extent are built upon the basic concepts—of finishing courses. However, only students completing a career course graduate and receive certificates of completion in the form of a diploma. In addition, the school offers a cooperative fashion merchandising course which entails three days a week of classroom work and three days a week practical work in a department store, for which the student is paid by the department store. Once a year the school operates a beauty contest to determine the Miss Cinderella of the year. It is not necessary, however, to be a student to enter this contest.

Hearings were held before an examiner, who filed his initial decision on January 26, 1968, dismissing all the allegations of the complaint as to all respondents. On May 28, 1968, the case was heard before the Commission upon complaint counsel's appeal from the examiner's initial decision and respondents' answer in opposition thereto.

² These tuition notes result when students are unable to pay for a school's courses of instruction in cash and instead enter into an enrollment contract and sign a negotiable promissory note. The contract provides that payment is to be made in specified monthly installments over a predetermined period of time. Payments are made directly to School Services, Inc., the holder of the note. The individual respondent, Vincent Melzac, was the president of School Services, Inc. and owned all of the Class A voting stock and one-third of the Class B nonvoting stock.

The Commission, on the basis of its findings of fact, on October 10, 1968, in part sustained and in part reversed the examiner's initial decision and issued its order accordingly. An appeal was taken and the case was remanded to the Commission for further consideration.

I

Two issues were considered by the court: (1) Whether the action of the Commission in reversing the hearing examiner comported with standards of due process—more specifically, “whether the full Commission in reviewing an initial decision, may consider the advertisements *de novo*, disregarding entirely the evidence adduced at a lengthy hearing, and arrive at independent findings of fact and conclusions of law, or whether the Commission is bound by its own rules and regulations, as well as concepts of due process, to review the conclusions of the hearing examiner in light of the evidence.” The court held that the Commission must follow the latter course and remand the case, with instructions that if the examiner's conclusions are set aside the Commission must so state and give its reason for so doing. (2) Whether then Chairman Paul Rand Dixon should have recused himself from participating in the review of the initial decision due to public statement he had previously made, which allegedly indicated prejudgment of the case on his part. The court held that then Chairman Paul Rand Dixon should have so recused himself and instructed the Commission to consider the record and evidence in reviewing the initial decision without the participation of Commissioner Dixon. Accordingly, this case is being decided without Commissioner Dixon's participation.

Pursuant to the court's instruction, the Commission has again reviewed the record of this proceeding in its entirety, along with the contentions of counsel. In this connection it should be noted that the findings and conclusions made by the Commission are based upon this review and after the Commission has carefully considered and weighed all of the evidence involved. Moreover, the Commission in doing this has also carefully considered the findings and conclusions made by the hearing examiner in his initial decision in light of its obligations as set forth in the court's opinion.

The remand is concerned with the following allegations: That respondents represent that they grant educational loans to students when in fact the student signs a negotiable installment contract; that respondents represent, contrary to fact, that their school or the courses it offers have been officially approved by a government nonprofit organization; that respondents misrepresent that the school offers courses of instruction which will qualify students to become airline

stewardesses or buyers for retail stores; and that respondents misrepresent that in almost all cases they will find jobs for their students through their job placement service. The examiner, in his initial decision of January 25, 1968, dismissed these charges for failure of proof. We will examine each allegation in turn.

The complaint charges that contrary to fact respondents represent that they make educational loans to students who register for the courses offered at Cinderella Career and Finishing Schools. This allegation is occasioned by a legend appearing in respondents' advertisements, which reads, "Approved by School Services, Inc., Washington, D.C. to extend education loans".

Respondents readily admit that they do not make either educational loans or any other type of loans in the traditional sense of that word, and this fact is not in dispute. Respondents contend, however, that this statement conveys no more than that it is not necessary to pay cash for a course of instruction but that a procedure is available whereby a student can purchase a course and pay for it on an installment basis.

The examiner dismissed this charge of the complaint on the theory that a distinction between a budget plan and a loan is one without a difference (I.D., p. 33) [74 F.T.C. at 953]. We believe the examiner's conclusion to be in error for the following reasons: The examiner's theory that the distinction between a budget plan and a loan is one without a difference is an oversimplified view of the issue involved. It is of no importance that the net effect is the same—to permit a student to pay for her tuition on an installment basis. The issue is: Does the statement have the capacity to deceive a prospective student? Or, more responsive to the specific facts—would a prospective student have answered the advertisement had she known the true facts?

There is evidence in the record that the term "education loans" might lead students to misunderstand the terms under which they might finance their enrollment in respondents' course.

Mr. Lester Jack Wilson, one of complaint counsel's expert witnesses, a counselor for at least eight years at Washington and Lee High School in Arlington, Virginia, testified as follows:

Q. Now, I read you at the bottom of the Commission's Exhibit 11 the statement "approved by School Services, Inc., Washington, D.C. to extend education loans."

What would that mean to the student, Mr. Wilson?

A. At the present time there are so many Government and Federal loans, aids to help students to seek worthwhile training and better themselves, that our students feel that this is, well they attach Federal loans to this is what they do.

Whether this is meant to do this or not, they do attach the idea that "well, I can get one of these Government loans." It doesn't say you can and it doesn't say you can't, but this is the way they interpret this in many cases. (Tr. 332-333.)

James G. Busick, the Superintendent of Schools in Dorchester County, Cambridge, Maryland for over 14 years, testified as follows:

A. Well, it sounds very much like it might be considered a part of the Higher Education Act where they could find loans, most any possibility. The one that is used in our section works through the banks. It is the united effort by banks and the Federal Government pays the interest up until the tenth month the child graduates from school and then they start paying back on the loan. It sounds very much like it comes under the Higher Education Act of 1965. That is the way that I would interpret it.

Q. How would these girls interpret it?

A. It sounds like they can get a loan very easily by the last statement.

Q. From whom?

A. Well, I would assume that the first places I would see something like this written I would think that it would come under the federal program of trying to add money for guaranteed loans under the Higher Education Act. (Tr. 686-687.)

Julia Fickling, one-time guidance counsel for the District of Columbia public schools and Acting Supervising Director at the time of her testimony, testified as follows:

A. Well, I am afraid that most students would assume, when they see the School Services they would assume that this meant the public school, and that they would be able to borrow money in order to take this training. (Tr. 442.)

In addition to this expert testimony which interprets respondents' advertisements as misleading, it is our belief that the capacity of these ads to deceive is apparent on their face.

We have no doubt that there is a substantial distinction between the terms "education loans" and the terms "credit terms" or "installment contracts." The distinction is evidence of a consumer preference for educational loans rather than installment contracts, of which preference respondents sought to take advantage by misrepresenting the true nature of the service offered.

Unquestionably the consumer reacts with less alertness to the term "education loans" than he would to "installment contracts" or a similar description, and he is thus lulled into a false sense of security, particularly when we consider that educational loans are frequently underwritten by some governmental body and are thus removed from the arms-length, hard-sell type of commercial transaction. In this case, the "glorification" may induce a prospective student to answer an advertisement which she might not have answered had it stated, "budget plans available" or words of similar import.

Accordingly, we disagree with the examiner's conclusion that these ads are not deceptive or misleading. In view of our divergent opinions, it is apparent that the terms of respondents' advertisements are susceptible to two interpretations, and it is, therefore, equally apparent

that the ads have the capacity to mislead the public. As such, they are false within the meaning of Section 5, and we so conclude.

The complaint also alleges that the same representation—"Approved by School Services, Inc., Washington, D.C. to extend education loans"—implies that School Services, Inc. is a government agency, or public, nonprofit organization that has officially approved Cinderella Career and Finishing School or the courses offered by such school.

The consumer testimony adduced in support of this allegation is inconclusive, although one consumer—Bernice Bowles—testified that it was her impression that the Cinderella advertisements represented that School Services' financing was "approved by the Board of Education to extend any type of loans concerning the school" (Tr. 546). The examiner did not consider this testimony persuasive or probative because, in his words, Mrs. Bowles was "obviously angry" at the Cinderella School "not for anything it had done or failed to do, but because her husband had berated her for aspiring to be a professional model" (I.D., p. 35) [74 F.T.C. 954].

The testimony of Lester Jack Wilson, one of the expert witnesses, the examiner did not consider probative because "the best evidence of a high school senior's understanding of any Cinderella advertisement would be the testimony of such high school senior * * *" (I.D., p. 36) [74 F.T.C. 955]. The ruling that a "best" or "better" witness is required to be called is a misapplication of the best evidence rule, which, as is generally recognized, applies to documents and not witnesses.³ Moreover, the ruling implies the need for consumer testimony to support a complaint allegation of deception or capacity to deceive. It is well established, however, that consumer testimony is not essential to support a finding of deception or capacity to deceive. Nor would the introduction of such witnesses assure testimony typical and representative of the group of consumers at which the advertisements are aimed.

James G. Busick testified:

* * * It sound very much like it comes under the Higher Education Act of 1965 that is the way I would interpret it. (Tr. 687.)

Well, I would assume that the first place I would see something like this written I would think that it would come under the Federal program of trying to add money for guaranteed loans under the Higher Education Act. (Tr. 687.)

This testimony the examiner dismissed with the statement that "if it proves anything, merely proves what the advertisement means to him—not to his high school seniors" (I.D., p. 36) [74 F.T.C. 955]. Busick's testimony was specifically prefaced, however, as relating to his students' understanding of these advertisements and not necessarily his own (Tr. 685).

³ Wigmore, *Evidence*, Sec. 1174 (3d ed. 1940) ; McCormick *Evidence*, Sec. 195 (1954).

Julia Fickling testified that "most students would assume, when they see the School Services * * * that this meant the public school, and that they would be able to borrow money in order to take this training" (Tr. 442). The examiner dismissed Mrs. Fickling's testimony with the statement that "it will not support any finding that any of the Cinderella school advertisements would deceive any female high school senior reading them" (I.D., p. 37) [74 F.T.C. 956]. The examiner concluded that the "Cinderella school advertisements which include the language 'Approved by School Services, Inc., Washington, D.C.' are not false, misleading and deceptive within the purview of Section 5 of the Federal Trade Commission Act" (I.D., p. 37) [74 F.T.C. 956]. We are unable to agree. Our own review of the record and analysis of the advertisements in issue convinces us now, as it did previously, that the use of the phrase "Approved by School Services, Inc., Washington, D.C." has the capacity to deceive the reader that the Cinderella school has been approved by some governmental or similar body.

The next issue concerns the allegation in the complaint that respondents misrepresent that they offer a course of instruction which qualifies students to be airline stewardesses. It is admitted that respondents do not offer such a course and the sole issue is whether respondents' advertisements represent that such a course is offered. The two advertisements reproduced below⁴ are among those giving rise to this allegation.

Respondents also distribute a pamphlet (CX 41) entitled "Wonderful things happen to a Cinderella Girl!" which, immediately below the heading "miracles after sundown," boasts that "Drab little typist becomes lovely airline stewardess!" The pertinent part of the pamphlet is reproduced below.⁵

In addition, many other advertisements provide a prospective student with a checklist of subjects of interest to her, one of which is "Airline," "Airlines Prep." or "Airline Preparatory." The expert witnesses introduced by complaint counsel testified on what they thought

⁴ One appeared in the "Educational Directory" of *The Washington Post* on Sunday, September 10, 1967, under the heading "Air Career," and reads:

"Cinderella Career College

1219 C St. N.W. 628-1950

"Air Career Training is now available at Cinderella Career School, 1219 C Street. Prepare for a Stewardess or Reservationist position. Call 628-1950 for a career analysis." (CX 155.)

The second advertisement (CX 154) depicts a smiling young lady in what appears to be a stewardess uniform and states: "free brochure on an airline career." The instructions which follow invite the reader to clip, complete and mail a brief questionnaire listing the applicant's name, address and age.

⁵ "Miracles after sundown—Drab little typist becomes lovely airline stewardess! Overweight order clerk now a fashion counselor! 'No-date' steno becomes belle of the office! High school graduate wins success in television! Middle-age widow looks ten years younger—gets exciting new job! Shy librarian gets three raises and a bean! Factory worker becomes studio receptionist!"

the various statements meant to high school graduates. James G. Busick testified:

A. Well, it would mean probably romance, it would mean attraction to move into something which would turn her into a very charming personality, that would appeal to her fancy and appeal to her romantic inclinations, I would assume.

Q. Reading further, "Training for exciting careers in executive secretarial, professional modeling, fashion and retailing, airlines." What would that mean to these girls?

A. Well, it would mean that they would have strong possibilities of being accepted into these four statements [sic: fields] and have a career in these fields, that would be my feeling. (Tr. 686)

William Henry Brown, a guidance counselor at McKinley High School in the District of Columbia, testified:

Q. Now, a statement here "training for exciting careers in executive secretarial, fashion and retailing, professional modeling and airlines," what would this mean to those students that you counsel?

A. Well, I would say here that the student would assume again that if she completed this particular course that she could expect to receive a high paying job that required quite a bit of training and it would be on a par of a profession, what she would do would amount to a professional type of work. (Tr. 459-460.)

Julia Fickling testified:

Q. What does this statement here "training for exciting careers in executive secretarial, fashion and retailing, professional modeling and airlines," what would that mean to high school graduating girls?

A. That once they had finished this course or this training that they would be eligible to get jobs in these areas, with airlines or as executive secretaries or as fashion models. (Tr. 441.)

Lester Jack Wilson testified:

Q. I see. Referring again to Commission's Exhibit 11 what does the statement "training for exciting careers in executive secretarial, fashion and retailing, professional modeling and airlines," what would this mean to these students?

A. To the student this implies that when she completes the school she can go into a top executive secretarial job. I don't believe many students could do this from any school, whether it be Cinderella or any business school or what have you. This implies "the top is there if you take our training," I suppose. Professional modeling, it implies the top of the top jobs is what the students—how they react to this. On the airlines, my knowledge is that the airlines will take people without this. Airline people have told me that they prefer they not have this type training, so, therefore, I don't see really what the airline training has to do to train a person to be an airline stewardess and if they have to take the airline training anyway after this. (Tr. 331-332.)

The examiner felt that these "statements are, in fact, hearsay, and their probative value, if any, is minimal" (I.D., p. 43) [74 F.T.C. 961]. That ruling misconceives the hearsay rule and the function of expert witnesses. Expert witnesses are called upon to testify on the

basis of their accumulated knowledge in a particular subject and their testimony does not come within the hearsay rule whereby out-of-court assertions offered testimonially, which have not been in some way subjected to the test of cross-examination, are rejected. Complaint counsel's expert witnesses testified on what, in their opinion, based on their experience, these advertisements in issue conveyed to high school seniors. Their testimony did not purport to relate to actual interpretations of these advertisements by particular high school seniors. In dismissing this charge of the complaint, the examiner was apparently guided by the testimony of respondents' expert witness, Addah Jane Hurst, a teacher at Washington and Lee High School, Arlington, Virginia. Mrs. Hurst testified that the representations concerning a career with an airline "certainly doesn't mean that they are going to go out and become a stewardess" (Tr. 1280). Her testimony on this question is as follows:

THE WITNESS: All right, this is exactly the same. Well, again, I must say that it seems to me that it simply is a matter of a training ground for—he asked specifically airline preparatory. Now, it certainly doesn't mean that they are going to go out and become a stewardess, but it simply means that this is a—how do I want to say—

HEARING EXAMINER GROSS: Mrs. Hurst, what does that ad feature? Look at the ad. What overall impression do you get from the ad?

THE WITNESS: Well, it seems to me it features, really it features the personal aspect of it, doesn't it seem to you? (Tr. 1282.)

In this context we again note, as we did in our first opinion, the examiner's inconsistent and contradictory treatment of the different witnesses' testimony. For example, the testimony of James G. Busick, one of complaint counsel's expert witnesses, the examiner considered without probative value because it "merely proves what the advertisement means to [Busick]—not to his high school seniors" (I.D., p. 36) [74 F.T.C. 955]. Yet, the examiner considered Mrs. Hurst's testimony dispositive of the issue even though the record contains contrary testimony and even though it seems to be her opinion and not that of high school girls.

Next, we again consider respondents' advertisements. The smiling young lady in the stewardess uniform which invites the reader to request a free brochure on an airline career, we interpret as follows: sign up for respondents' course and become a stewardess. Similarly, the miracle after sundown in which the drab little typist becomes a lovely airline stewardess, conveys the same impression. Our own review of the record convinces us that the examiner erred in dismissing this charge of the complaint. The examiner also erred by improperly applying the hearsay rule to exclude the testimony of a number of witnesses and by failing to consider the advertisements themselves, as

well as the stipulation with respect thereto. We conclude that respondents do in fact represent that they offer a course of instruction which qualifies students to be airline stewardesses, whereas respondents admit that their courses do not so qualify their students.

Finally, the complaint alleges that respondents represent contrary to fact, that they offer a course of instruction which qualifies students for jobs as buyers for retail stores. This allegation is occasioned by the advertisements and other statements by respondents concerning their course of instruction in retail fashion merchandising, some of which are reproduced below.⁶

⁶ "Comprehensive training in the many facets of fashion careers. Includes retailing, buying, sales promotion, advertising, display and practical field trips. FASHION IS A YOUNG PEOPLES FIELD. In no other area can a woman assume executive status at such an early age. Fashion is a stable field, the third largest in the U.S. High School Diploma or equivalent is required. SEND FOR BROCHURE. NO OBLIGATION." (CX 16-b through CX 21; CX 155.)

"TRAINING FOR EXCITING CAREERS IN Executive Secretarial—Professional Modeling—Fashion & Retailing—Airlines," (CX 11; CX 12; CX 13; CX 14.)

"CAREERS! The Cinderella Career and Finishing School offers * * * careers in EXECUTIVE SECRETARIAL, PROFESSIONAL MODELING, FASHION MERCHANDISING, RETAIL BUYING." (CX 6; CX 22; CX 26.)

"WE'VE GOT THE CINDERELLA SECRET—Come in and find out what it is. Our world famous Cinderella Finishing Training can make you poised, lovely, confident! Career Training for: EXECUTIVE SECRETARIAL—PROFESSIONAL MODELING—RETAIL FASHION MERCHANDISING—AIRLINES PREP." (CX 7; CX 8; CX 9.)

"Let's take a look at some of the things we offer: FASHION BUYER: The position of a buyer is both responsible and rewarding. For buyers of womens' apparel, this consists of a whirlwind tour of showrooms to view the new seasons' offering in New York, Chicago, and San Francisco. Some buyers are selected to make trips to foreign markets such as Paris, Rome or London. Earnings of buyers range from \$5,000 to over \$20,000 depending upon the size and type of department." (CX 43.)

"FASHION CAREERS

"All our lives are touched by fashion, for fashion is everywhere. There are fashions not only in clothing but in cars, furniture, interiors, and foods. Fashion is a fast moving world that needs people in administrative capacities who are alert, and welcome the excitement of change.

"The Fashion Career Course at Cinderella's is a varied program touching upon many facets of fashion careers, because we feel many young people are not exactly sure of what they wish to do. Some may have a latent talent for organization—some have an undiscovered knack for fashion 'know-how'—some, perhaps, a flair for writing.

"The curriculum and our faculty (all university graduates with retail experience) is selected to bring out these hidden talents and help you find your niche in the remunerative field of fashion—where advancement is quite rapid.

"Our students observe and analyze the activities of the 'F' Street stores. They prepare assignments from window displays, sales promotion campaigns, advertising and business activities. Thus they gain from the actual experience of others already in the field. In addition to preparing reports, they conduct meetings and learn the importance of getting along with people. Fashion is a young people's field. In no other area can a woman assume executive status at such an early age. And, of course, along with executive status comes financial reward. Fashion is a stable field! It is the third largest industry in the United States, following only steel and food.

"Opportunity in retailing, just one segment of fashion, is unlimited. With the exploding population and resultant opening of Branch Stores across the country, new jobs are constantly being created. One half of retailing's top executives are under 35 years of age. Forty percent of retailing executives are women. The average buyer earns between \$10,000 and \$20,000, some earn more." (CX 44.)

The testimony concerning this allegation is fully explored by the examiner in his initial decision and falls into three categories: that which supports complaint counsel's position, that which supports respondents' position and that which is inconclusive. The testimony is given by expert witnesses called by complaint counsel, expert witnesses called by respondents and consumer witnesses, respectively. The testimony of the expert witnesses called by complaint counsel the examiner considered as follows:

This, of course, is the rankest kind of hearsay evidence, and not probative. It is yet not clear to the hearing examiner why complaint counsel did not place upon the witness stand witnesses who had read the Cinderella advertisements and interpreted them in the manner asserted in the complaint. The hearing examiner must conclude that complaint counsel did not have any such witnesses—and that the failure to produce them is attributable to the fact that the advertisements were and are not in fact deceptive in the manner asserted in the complaint. (I.D., p. 49 [74 F.T.C. 965].)

This conclusion by the examiner is erroneous. Complaint counsel did introduce, by way of expert witnesses, witnesses which did interpret respondents' advertisements in the manner asserted in the complaint. The examiner chose to characterize this testimony as hearsay and of no probative value, which, as discussed above, constitutes an erroneous evidentiary ruling. The examiner also implies that complaint counsel should have introduced consumer witnesses to testify on the interpretation of these advertisements. Such is clearly not necessary. However, we have reviewed this testimony in its entirety and give it little weight. Our own examination of the advertisements and the related material persuades us that the challenged representations have the capacity to deceive a sufficient number of people into believing that respondents offer a course of instruction which qualifies students for jobs as buyers for retail stores to warrant entry of a cease and desist order.

The plain import of respondents' message is "take this course and qualify as a buyer." Respondents claim to offer "comprehensive training in buying," "careers in retail buying," "fashion buyer" and in vivid terms describe the glamorous activities of buyers and their remuneration. These are not subtle innuendoes but direct representations which promise the prospective student that upon taking this course she will qualify as a buyer, which simply is not true. We fail to see how these representations can be interpreted any other way. The promise of the whirlwind tour, the promise of New York, Chicago, and San Francisco, the promise of Paris, Rome or London is false. Respondents have stipulated that completion of a course of instruction would not qualify a student for a position as buyer in a retail establishment. The

representation is therefore false and deceptive and should be enjoined.

We do not believe it necessary to elaborate on the testimony relating to the allegation of the complaint that respondents misrepresent that in almost all cases they will find jobs for their students through their job placement service. The record contains a stipulation that none of respondents' students would, merely because they had completed a course of instruction in the Cinderella school, qualify for a job as an airline stewardess or retail buyer. Since respondents' students are not qualified to fill these positions, a job placement service with respect to such positions does not exist. Hence, a representation that it does is false and misleading.

We have also again reviewed the testimony of the expert witnesses called by respondents, as, for example, Yolanda Costello, Suzette Kettle and Peter Gough, insofar as it applies to the foregoing allegations. The testimony, while supportive of respondents' position, does not overcome the plain meaning of the advertisements in issue.

A review of the entire record in the light of the court's instructions convinces us that the hearing examiner was in error in his interpretation of respondents' representations. Our further review of the entire record convinces us that respondents made the representations alleged in the complaint and that these were false in violation of Section 5 of the F.T.C. Act.

II

Next we turn to those allegations of the complaint arising out of other representations and conduct as distinguished from the various advertisements. Paragraph Seven of the complaint includes a charge that respondents, during the course of an interview with a prospective student, frequently misrepresent that completion of one of respondents' courses of instruction will enable the applicant, in most cases, to obtain a better job through respondents' many contacts in the business world. The examiner summarily dismissed this complaint charge.

Allied to this alleged misrepresentation is respondents' practice of placing from time to time what appear to be help-wanted type advertisements in the local newspapers. One such advertisement reads:

Model-Type woman wanted, exp. not necessary, training avail. Call 628-1950, Cinderella Career College. Ask for Miss North. (CX 34.)

One of the consumer witnesses—Miss Penny Alexander, who responded to a similar advertisement stating "Model-Type Girl Wanted"—testified that she expected to be interviewed for a job but instead was enrolled in the school. The record demonstrates that the placing of this type of advertisement is a blatant ruse on the part of

respondents to lure young women onto their premises under the guise of having available a position solely for the purpose of enrolling the applicant in the school. The record is clear that no specific job is available nor do respondents intend to fill a position when these advertisements are placed. Clearly, central to respondents' mode of operation is the promise of the availability of jobs and the holding out of non-existent jobs to prospective students for the sole purpose of enrolling them in the school.

Fourteen other consumer witnesses testified as to the better job allegation. The testimony of five of these was specifically rejected by the examiner, who questioned the credibility of these witnesses. This ruling, as it involves the issue of credibility, will not be disturbed.

The testimony of the remaining nine consumer witnesses was reviewed in summary and incomplete fashion without comment by the examiner. It can only be assumed that in deciding to dismiss this complaint charge the examiner did not give this testimony any weight, although from the record it does not appear he questioned the veracity of these witnesses or disbelieved their testimony. He did not, however, articulate his reasons for failing to take this testimony into account and his findings pertaining to this allegation are thus incomplete. Section 8(b) of the Administrative Procedure Act provides that

* * * All decisions (including initial, recommended, or tentative decisions) shall become part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record * * *.⁷

The absence of a specific conclusion and the basis therefor with respect to this testimony necessitates a comprehensive review thereof.

Mrs. Sandra Roth, who had some previous experience as a photographic model, testified that she enrolled in the school upon the assurance that she would have no problem getting jobs as a model. In addition, she was told that she would get jobs during her schooling, resulting in possible sufficient remuneration to help her make the monthly tuition payments. During cross-examination Mrs. Roth testified that before her interview at Cinderella Career and Finishing School she had an interview at the John Robert Powers School.

Well, this is sort of different because John Robert Powers is strictly a finishing school. They don't give jobs, you know. They don't put you out as a model. They just give you finishing courses instead of a modeling course. (Tr. 623)

While attending school Mrs. Roth obtained three jobs through the school. Two of these jobs paid \$31.50 after payroll deductions, for ap-

⁷ 60 Stat. 237 (1946) ; 5 U.S.C. 551.

proximately eight hours each. The other job "paid" a wig for four days of modeling, from 10 a.m. to 7 p.m., or a total of 36 hours.

After her graduation Mrs. Roth regularly called the school for a period of three to four months concerning the availability of jobs, but without success, with the exception of teaching one Saturday class at Cinderella for \$3.50 an hour. She finally accepted a full-time position at the front desk of the Sheraton Park Hotel in Washington, D.C., and never did receive a position through Cinderella Career and Finishing School in her chosen field—professional modeling.

Mrs. Vera White, after being interviewed at the school with her oldest daughter, Janis, enrolled her four daughters in the school in May 1966, for a total contract price of \$1,387.05 (\$1,040 of which was for Janis). In response to the question whether anything was said during the interview about Janis getting jobs, Mrs. White testified:

The lady, Mrs., I don't know her name, the light-haired lady told, she said after September she [Janis] would be making her own money, she would be out modeling, and I figured she would be modeling at some of the stores, you know, local stores, I didn't think she would be on TV and all of that, and she said—I told her that the course is rather high. She said "oh, don't worry about that." She would be making her own money and this would help pay for her course, and I said good. This is the thing that caused me to go ahead with it, you know, because I figured she would be modeling and making her own money locally. (Tr. 650-51.)

Janis received one student group assignment—modeling hats on the street—for which she did not get paid.

Sometime during September Mrs. White was invited to come to the school, ostensibly for the purpose of receiving a progress report on Janis. While there, however, an effort was made to sell her additional courses of instruction for Janis at a time when Janis had not even completed one-fourth of her original course and had not even received one paying modeling assignment.

Shortly thereafter, being discouraged about not getting any jobs, Janis discontinued her course. On this point Mrs. White testified on cross-examination:

She [Janis] got discouraged because she wasn't getting paid for it and that was the reason she took it. (Tr. 677.)

With respect to the testimony of the consumer witness Robin North, the examiner held that it was not substantial, probative evidence, apparently because she did not sign an enrollment contract. This testimony is clearly substantial, probative evidence, however, insofar as it pertains to what transpired during the course of the interview and what was said in order to induce prospective students to enroll in the school.

With respect to the better job allegation, Mrs. North testified:

* * * So, and he [one of respondents' sales representatives] said that the average model would make from \$10 to \$15,000 a year, but he didn't come right out and say that I would be the average model, but he left the impression, he talked as if I would be a hit, I would make it. I didn't have any word, I just thought I would make it and get it and wouldn't have to worry.

By Mr. Freer:

Q. Did he mention any Cinderella graduate who made the big amounts?

A. He showed us a newspaper article with several models on the top, fashion models, and one was from the Cinderella School of modeling in Chicago and that was Wilhelmina and she was a top model.

HEARING EXAMINER GROSS: Is that right, Robin?

THE WITNESS: I guess. She made approximately \$85,000 a year. (Tr. 743.)

Miss Gloria Lancaster was accompanied on her interview at the Cinderella Career and Finishing School by her aunt, Mrs. A. Donelson. Miss Lancaster, who subsequently enrolled in a professional modeling course and attended eight months, gave the following testimony:

A. Yes. She told us that during the time we were in the school Capitol Fur Salon—I don't know whether it was a contract or what, but she mentioned us modeling furs in Capitol Fur Salon, but nothing ever came of it. (Tr. 752.)

Miss Lancaster never obtained any kind of a position through Cinderella Career and Finishing School. Miss Lancaster did not complete her course of instruction and withdrew from Cinderella Career and Finishing School.

Mrs. Anne Donelson, Miss Lancaster's aunt who accompanied her on her interview and who signed her contract with Cinderella Career and Finishing School, corroborated this testimony. Mrs. Donelson stated that during the interview they were told that modeling jobs would be assigned to these students.

During cross-examination and in response to the question as to her understanding whether students would get paid for any modeling assignments Mrs. Donelson testified:

A. Well, it was my understanding that they would be, although I can't recall now whether the subject of salary or payment came up in the course of the conversation. She did say, however, that they would be going out, as I said, on these particular assignments, and that they would be used as they got along in advanced training, and then, of course, they would place them for jobs when they had finished the course. So I assumed that naturally they would be salaried assignments. (Tr. 769-70.)

Mr. Andrew M. Egnot enrolled his daughter Michelle for the minimum 25 hour finishing course, which she completed. In answer to the question whether any mention was made during the interview of the school obtaining jobs for its students, he testified:

There was some mention, I think, of experience and then some part-time. But this was one thing that I did try to find out about, just how many jobs were

available, and whether they were part-time or full-time. I was told that as you went along, depending upon, of course, your potential, and depending upon yourself, these jobs would come along. (Tr. 779.)

Mr. Egnot's questions as to the availability of jobs were never answered specifically; however, he was left with the definite impression that jobs would be forthcoming. His daughter never did obtain a position or an assignment through Cinderella Career and Finishing School.

Mrs. Ruth A. Kahkonen was interested in professional modeling and enrolled in the school. She testified that the promise of jobs during the interview influenced her to enter the contract—"The money sounded very good." Mrs. Kahkonen got two jobs while attending the school, neither one of which had anything to do with professional modeling. One of these jobs consisted of handing out litter bags at the stadium, for which she received \$13. Mrs. Kahkonen did not finish her course because she was not getting the jobs which had been promised to her and due to personal problems.

Miss Opal S. Boyd, who was interested in professional modeling, testified that during the interview she was told that a job would be obtained for her while she was attending the school and that after she had taken 50 hours of modeling she would be prepared for a part-time modeling job. Miss Boyd completed her course but never obtained a job while attending classes or thereafter through Cinderella Career and Finishing School.

Miss Charissa Craig testified that while attending a teen fashion show she was approached by a representative of the Cinderella Career and Finishing School to see if she would be interested in taking a course there because she would make \$60 an hour modeling. As a result, Miss Craig, accompanied by her mother, went to the school for an interview, during which it was again represented to her that she would start at \$60 an hour while she was still attending classes. Not entirely convinced that she should do so, Miss Craig's mother was persuaded to sign the enrollment contract upon the oral representation that it could be cancelled should she change her mind. The Craigs subsequently managed, though not without some difficulties, to have their contract cancelled and lost only a \$5 deposit.

The testimony of these witnesses is uncontested. Although a number of respondents' employees testified in a general way to the effect that they do not promise or guarantee jobs to prospective students, this in no way contradicts or vitiates the specific and concrete testimony of these consumer witnesses. In the light of this testimony we are at a complete loss to understand how the examiner reached the conclusion

to summarily dismiss the better job allegation of the complaint. Only studious avoidance of the plain import of this testimony could have brought about this result.

The direct and straightforward testimony of these consumer witnesses unequivocally demonstrates that respondents, for the purpose of inducing prospective students to enroll in the school, promised better jobs to these students—a promise which respondents are unwilling or unable to fulfill. A number of witnesses also testified that this particular representation was instrumental in persuading them to embark upon what they considered a very costly undertaking. To overcome this objection respondents, in a number of instances, went so far as to suggest that the jobs their students would obtain would result in sufficient pay to partly defray, if not pay in its entirety, the cost of the course. Of those witnesses who did attend the school not one obtained a job during that time through Cinderella Career and Finishing Schools which resulted in sufficient compensation to help defray even a minor part of the total cost of the course, much less pay for it in its entirety. Not even those witnesses who graduated from their prescribed courses of instruction were successful in obtaining employment through the Cinderella Career and Finishing Schools.⁸ By these representations respondents seek to take unfair advantage of those who, for economic or other reasons, are unable to attend an institution of higher learning but nevertheless manifest a sincere desire to improve themselves, although for many—as amply demonstrated by the record—the cost of one of respondents' courses of instruction constituted a considerable economic sacrifice.

In this context it should be recalled that the dominant theme of respondents' advertising is a "career" in various fields of endeavors and the promise to provide young women with the requisite qualifications for material advancement. Similarly, a young woman attracted to the school is interested in self-improvement—not for its own sake, but in order to enhance her advancement possibilities. By the time the prospective student is interviewed at the school, she has been conditioned to believe that enrolling for a course of instruction will qualify her for a better position.

We must conclude that these representations constitute an unfair or deceptive act and practice and an appropriate order will be entered.

⁸ Whatever success respondents may have had in finding positions for their students in retailing and secretarial, they do not appear to have been very successful in professional modeling, the field in which these witnesses were interested.

III

The complaint also contains an allegation that respondents have misrepresented that Dianna Batts, "Miss U.S.A. 1965," and Carol Ness, "Miss Cinderella 1965," were graduates of Cinderella Career and Finishing Schools and owe their success to the courses taken there.

The advertising in question can be found in the appended Findings of Fact. [PP. 576-77 herein.]

The examiner dismissed this charge because the statements concerning Miss Batts and Miss Ness are true and correct representations of fact.

The advertisement does not specifically state that Miss Batts and Miss Ness are graduates of the school. It states that they are "Cinderella girls" which, by virtue of having attended the school, they presumably are. We are unable to agree with complaint counsel that this implies they are graduates. While there can be little doubt that a good deal of their success is due to their natural aptitudes, it would serve no useful purpose to attempt to delineate which part of their success is due to their natural aptitudes and which part resulted from their association with the school.

Accordingly, this allegation of the complaint will be dismissed.

The complaint further charges that respondents misrepresent that graduates of various of respondents' courses of instruction are thereby qualified to assume executive positions in the fields for which they have been trained by respondents.

The examiner found that "it is entirely plausible for a reader of the Cinderella ads to believe that upon graduation from the secretarial course she could become an executive secretary (Tr. 332), and that graduates of the fashion merchandising course would be qualified to assume 'executive' positions in that field." (I.D., p. 62 [74 F.T.C. 975].) However, the examiner dismissed this allegation, partially on the theory that the record does not contain sufficient evidence upon which to determine the meaning of the word "executive."⁹ While ordinarily the Commission would be entitled to rely on its own expertise in arriving at a conclusion as to the general meaning and import of a particular word, it does not appear that reversal of the examiner on this point in the instant matter is warranted. From the record it appears that at least in one field of endeavor with respect to which this representation is made—retailing—the status of executive is far more readily

⁹ It is interesting to note that the individual respondent, Vincent Melzac, testified that graduates of the school are not qualified to assume executive positions in the various fields taught by the school.

acquired than it would be in other fields of endeavor.¹⁰ Accordingly, this allegation of the complaint will be dismissed.

Also alleged in the complaint is that respondents have misrepresented that the Cinderella Career and Finishing School is the official Washington, D.C. headquarters for the Miss Universe Beauty Pageant.

Based on the testimony of Mr. Sidney Sussman, the owner of the Miss Universe franchise for Maryland, Virginia and the District of Columbia, to the effect that he had designated the Cinderella school as the official headquarters for the Miss Universe Pageant, the examiner dismissed this charge.

It should be pointed out, however, that Mr. Sussman also testified that the Cinderella school was not the only official headquarters and that any establishment so designated by him would be entitled to call itself the official Miss Universe Pageant headquarters. In fact, Mr. Sussman has designated a number of establishments "official headquarters."

To the extent that "the official headquarters" connotes "the one and only" or "the exclusive" official headquarters, as distinguished from "an" official headquarters, the designation is incorrect. However, we do not believe that a finding of deception upon such a technicality is warranted in the instant proceeding. The representation is ancillary to the main issues involved and of doubtful materiality in the context in which it appears and accordingly will be dismissed.

The last allegation of Paragraph Six of the complaint charges that respondents have misrepresented that Cinderella Career College and Finishing School is a college. We agree with the examiner in dismissing this particular charge.

In our opinion, the fact that the word "Career" precedes the word "College" in the school's trade name sufficiently modifies the word "College" so as to render highly unlikely the possibility of anyone mistaking respondents' school for an institution of higher learning.

Paragraph Seven of the complaint, among others, charges that when a potential student first visits the school she is frequently led to believe that contrary to fact she is qualified to compete in various beauty contests if only she would sign up for courses given by the school, which will bring out the best in her. This, the complaint alleges, constitutes an unfair or deceptive act and practice.

The examiner dismissed this charge for failure of proof.

The qualifications to enter the Miss D.C. Beauty Pageant are set out in the official entry blank, which requires that

¹⁰ For example, the record contains testimony that a trainee bridal consultant or an assistant buyer is an executive or junior executive position.

Opinion

79 F.T.C.

[c]ontestant must be of good character and possess poise, personality, intelligence, charm and beauty of face and figure. (CX 36.)

It would indeed be the cruelest of hoaxes to lead a prospective student who is obviously unqualified to enter a beauty contest to believe she is so qualified solely for the purpose of inducing her to enroll in the school, which allegedly will bring out the best in her. Such action would be tantamount to fraud. However, the record does not contain any evidence to the effect that this representation was made to prospective students obviously unqualified to enter such beauty contests.

Paragraph Seven, subparagraph 2 of the complaint alleges that respondents, in the course of making the various representations and others similar thereto which are challenged in the complaint, subject the potential student to constant pressure to get the student started right away on various of respondents' courses of study and present various documents, including a negotiable enrollment agreement for said potential student's signature, without revealing the negotiable and noncancellable nature thereof or allowing sufficient opportunity to permit the reading or careful consideration thereof, and in many instances respondents are thereby successful in securing the student's commitment to such courses. This, according to the complaint, constitutes unfair or deceptive acts and practices.

The examiner summarily and without elaboration dismissed this complaint charge.

A careful review of the record indicates that the evidence and testimony contained therein is insufficient to support this charge. The enrollment contract with which a prospective student is presented states that the combined registration-tuition fee is not refundable. In addition, above the signature line, in larger than normal print, it states "Non-cancellable" and appended to the contract is a promissory note which also states in larger than normal print "Negotiable Promissory Note." We must presume that a prospective student is capable of reading this very short contract. It may well be that a prospective student does not grasp the full import of the provisions contained therein; based on this record, however, we are not prepared to rule that respondents have a greater burden of explaining these provisions than is customary. The significant contract provisions appear to be adequately disclosed and in the absence of oral representations to the contrary do not warrant further consideration.¹¹ Nor does the record contain sufficient evidence with respect to the "constant pressure" al-

¹¹ One consumer witness testified that she only entered the contract upon the express oral representation that it could be cancelled should she change her mind. She did, however, upon changing her mind, manage, though not without some difficulties, to have the contract cancelled.

legation. While there is some testimony from which support for this allegation may be inferred, it is insufficient for the purposes of sustaining an order to cease and desist. Accordingly, this charge of the complaint will be dismissed.

IV

During the course of this proceeding the issue arose which of the various respondents, should violations of Section 5 be found, are responsible therefor. Before considering the merits of this proceeding the examiner dismissed the complaint against School Services, Inc., Cinderella Career and Finishing Schools, Inc., and the individual, Vincent Melzac. We are unable to agree with this conclusion.

At the head of this "ball of wax" stood Vincent Melzac as owner or controlling owner of the three corporate respondents. In 1958, at a time when School Services, Inc. was in need of money and full-time management, Vincent Melzac provided both. He became president and owned all of the Class A voting stock, as well as one-third of the Class B nonvoting stock. Until it was sold, Vincent Melzac was the chief operating officer of School Services. The business of School Services consists of purchasing student tuition notes from various schools in accordance with the terms of a contract it has with such schools.

A wholly-owned subsidiary of School Services is Patricia Stevens Career College and Finishing School of Chicago, Illinois, to the operation of which Vincent Melzac devoted part of his business efforts.

Cinderella Career and Finishing Schools, Inc. was owned by Vincent Melzac. It is a corporation which franchises, for a fee, a system of operating and developing finishing and career schools. It supplies its franchises with advertising material, including some of the material in issue in this proceeding, curricula, manuals, instructional devices and related materials. Vincent Melzac was its sole and controlling stockholder, who formulated, directed and controlled its acts (answer of respondent Cinderella Career and Finishing Schools, Inc., p. 8).

The Stephen Corporation operates the Cinderella Career College and Finishing School pursuant to a franchise from Cinderella Career and Finishing Schools, Inc. Vincent Melzac was its controlling stockholder. He formulated, directed and controlled its policies (answer of respondent Stephen Corporation, p. 8). Much of the questioned advertising material used and distributed by the Stephen Corporation is received from Cinderella (answer of respondent Cinderella Career and Finishing Schools, Inc., p. 8). It is against this background that the examiner concluded that any violation of Section 5 could only be charged against Stephen. Complaint counsel maintain that any

violation of Section 5, if any is found, must be attributed to all respondents and particularly Vincent Melzac, "the dominant force of the entire spectrum of operation" (A.B., p. 5).

A review of the record persuades us that as to the corporate respondent School Services, Inc., the complaint should be dismissed. School Services is engaged in the purchase of student tuition notes and ancillary thereto supplies its clients with tuition and enrollment forms. The record does not demonstrate any connection, other than being part and parcel of the same general operation owned by Vincent Melzac, between the conduct of School Services and the practices challenged by the complaint. In the absence of any reliable evidence that School Services has engaged in any of the challenged practices, the complaint against it must be dismissed.

We cannot, however, agree with the examiner's conclusion to dismiss the complaint against Cinderella. The record is clear that the advertising material which is the subject of this proceeding either originates with, has been supplied by, or has been reviewed by Cinderella (finding 14). Furthermore, Vincent Melzac testified that Cinderella and Stephen share some of the costs incurred in promoting the school. These facts by themselves would be sufficient to hold Cinderella responsible for the deception created by these advertisements.¹² In addition, however, the franchise agreement (CX 74-a) requires that Stephen submit all advertisements promoting the school to Cinderella (finding 14). We fail to see how Cinderella can avoid responsibility for a violation of Section 5 resulting from an advertisement deceptive on its face or one which is deceptive because Stephen did not perform as promised by the advertisement.¹³ For this reason, as well as those already mentioned, Cinderella has been found to be responsible for the deception created by the questioned advertisements. Furthermore, it should be recalled that the individual, Vincent Melzac, was the sole owner of both Stephen and Cinderella and formulated the policies of both corporations.

There is no dispute as to the liability of the corporate respondent Stephen for any violations of Section 5.

¹² As the court stated in *Regina Corp. v. Federal Trade Commission*, 322 F. 2d 765, 768 (3d Cir. 1963):

To the extent that petitioner contributed towards the cost of misleading advertisements, it was equally responsible with its retailers for the deceptive character of the representations that appear therein.

It is equally well settled that "[o]ne who places in the hands of another a means of consummating a fraud or competing unfairly in violation of the Federal Trade Commission Act is himself guilty of a violation of the Act [citations omitted]." *C. Howard Hunt Pen Co. v. Federal Trade Commission*, 197 F. 2d 273, 281 (3d Cir. 1952).

¹³ Under the franchise agreement Stephen is required to obtain written consent for any departures from the prescribed curriculum.

Also erroneous must be considered the examiner's conclusion to dismiss the complaint against the individual, Vincent Melzac. Vincent Melzac was the sole owner of both Stephen and Cinderella. Although he was not an officer of either corporation, respondents have admitted that he formulated, directed and controlled the acts and policies of both corporations (answer of respondent Cinderella, p. 8; answer of Stephen, p. 8). Based on the record, the examiner found that with respect to Cinderella Vincent Melzac assisted in formulating the policies and overseeing its operation (finding 27). In the face of this finding and the answers of respondents Cinderella and Stephen, the examiner's conclusion, made without record support, that Vincent Melzac has not personally or individually engaged in any allegedly deceptive acts and practices (finding 51) is clearly erroneous. In addition, the record amply demonstrates that the successful operation of both corporations very much depended upon the personal background and experience of Vincent Melzac. This fact alone would justify including Vincent Melzac as one of the respondents. We also do not agree with counsel for respondents' contention that because Vincent Melzac did not concern himself with the day-to-day activities of the corporations the complaint against him should be dismissed. The determining criterion in this case is that Vincent Melzac formulated, directed and controlled the acts and policies of the corporate respondents and not whether he participated in their day-to-day activities.

It should also be noted that prior to the issuance of the complaint, when an attorney of the Federal Trade Commission questioned a representation in the advertising material of the respondent Stephen, this attorney conferred with Vincent Melzac. It was Vincent Melzac who agreed to make the suggested change and it was he who issued the necessary instructions to effectuate the change. Accordingly, Vincent Melzac must be retained as an individual respondent.

v

Respondents, in their answering brief to the Commission, request that in case the Commission reverses the examiner's determination they be granted leave to submit a supplemental brief dealing with a number of issues. This request will be denied.

During the course of this proceeding respondents requested permission to file interlocutory appeals, wherein respondents asserted that the Commission had no basis to believe that respondents have violated the Federal Trade Commission Act. This issue, aside from having been fully considered and dealt with in the order (issued June 16) denying respondents' request for taking deposition and production of docu-

ments,¹⁴ has been rendered moot by a finding of violations of the Federal Trade Commission Act. Also fully considered previously (orders of June 16, 1967 [71 F.T.C. 1703] and September 12, 1967 [72 F.T.C. 1003]) has been respondents' contention that this proceeding is not in the public interest or in the alternative, if there is any public interest it is obviously *de minimis*. Since that time respondents have not introduced nor alleged the existence of additional facts which would warrant granting respondents' present request for leave to file a supplemental brief.

Respondents' contention that the Commission is incapable of rendering a fair and impartial decision refers to, we assume, the also previously considered Commission practice of issuing press releases and the contacts by a Commission attorney with members of the press. In order to furnish support for this contention respondents requested and were granted the appearance of two Commission employees during the course of this proceeding. Respondents do not allege, nor does a review of the record indicate, that the testimony elicited from these witnesses supports respondents' contention.

Respondents further allege that new issues arose as a result of the appearance of a Commission attorney on a television program broadcast while the hearings were in progress and on which also appeared witnesses involved in this proceeding. Respondents do not state what these issues are. This precludes a determination of the merits of whatever allegations respondents may put forth. Respondents also failed to take advantage of their opportunity to fully brief and argue any and all issues which allegedly arose as a result of this television program at the time this case was heard before the Commission on May 28, 1968, and again on February 9, 1971. Such vague contentions of the existence of unresolved issues do not warrant an extension of the appeals procedure or an exception to its well defined principles. Accordingly, respondents' request for leave to submit a supplemental brief will be denied.

Pursuant to the court's instructions, Commissioner Dixon recused himself from participating in this case.

FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER

The Federal Trade Commission issued its complaint in this matter on February 13, 1967, charging respondents with false and misleading

¹⁴ This matter was again considered by the Commission in its order issued September 12, 1967 [72 F.T.C. 1003], denying respondents' request to file an interlocutory appeal and ruling on respondents' application for the production of documents and the appearance of Commission employees.

advertising and unfair or deceptive acts and practices in violation of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. Sec. 45(a)(1)). Hearings were held before an examiner, and testimony and other evidence in support of and in opposition to the allegations of the complaint were received into the record. In an initial decision filed January 26, 1968 [74 F.T.C. 920], the examiner dismissed the complaint as to all respondents, on the ground of failure of proof.

The Commission, having considered the appeal of counsel supporting the complaint and respondents' answer in opposition thereto and the entire record, and having determined that the initial decision is inappropriate and should be vacated and set aside, now makes this (as supplemented by the accompanying opinion) its findings as to the facts, conclusions drawn therefrom, and order, the same to be in lieu of those contained in the initial decision.

FINDINGS OF FACT

1. Corporate respondent School Services, Inc. (SS), incorporated on December 13, 1955, under the District of Columbia Business Corporation Act (stipulation June 21, 1967; CX 1; CX 3), has been engaged continuously since its incorporation in 1955 in the purchase and discount of installment notes and other commercial paper, including installment notes given in payment of tuition by students who enroll in various schools licensed by Cinderella Career and Finishing Schools, Inc. SS is engaged in "commerce" as that term is defined under the Federal Trade Commission Act.

2. Individual respondent Vincent Melzac owns and controls all of the Class A voting stock issued by corporate respondent School Services, Inc. Melzac and 31 other persons own the Class B nonvoting stock of SS (Tr. 126).

3. Corporate respondent Stephen Corporation was incorporated on May 11, 1965, under the District of Columbia Business Corporation Act (stipulation June 21, 1967; CX 2; CX 4). It conducts the Cinderella Career College and Finishing School at 1219 G Street NW., Washington, D.C., and seeks to enroll students from states outside the District of Columbia. Stephen is engaged in "commerce" as that term is defined under the Federal Trade Commission Act.

4. Corporate respondent Cinderella Career and Finishing Schools, Inc., 1219 G Street NW., Washington, D.C. (the licensing corporation), incorporated on December 3, 1963 in the District of Columbia, under the District of Columbia Business Corporation Act (stipulation June 21, 1967; CX 4-A), has, since the date of its incorporation, been engaged in "commerce" as that term is defined in the Federal Trade

Commission Act. It has also done business at and used the address, 1221 G Street NW., Washington, D.C.

5. Students completing courses of instruction at the Cinderella Career College and Finishing School operated by Stephen Corporation are not awarded any academic degrees.

6. None of the corporate respondents has the power or authority to confer degrees or admit persons to degrees (stipulation June 21, 1967).

7. Respondent SS, a corporation organized under the laws of the District of Columbia, with its principal office located at 1100 Vermont Avenue NW., Washington, D.C., contracts with schools (such as the Cinderella school) to purchase their student tuition notes (Tr. 68). SS conducts its own credit and financial probe of the companies before entering into a business relationship with such companies (Tr. 99, 103). If SS determines that a school, such as the Cinderella school, is financially sound, an agreement is entered into (Tr. 69, 99, 137), which provides that SS will purchase all of the company's installment paper which exceeds \$100 per unit when not less than 10 percent of the total price of the course for which the note is taken has been received by the school (CX 75; Tr. 97). When the first payment is received from a student, SS transmits 50 percent of the face value of the note to the school (Tr. 97). As SS collects the monthly payments, it applies the proceeds toward the advances it has made to the school. When the final payment is received, SS remits the remaining 40 percent that has, up to that time, been retained by it in a contingent account (Tr. 98). As the collections are made SS deducts a 10 percent service charge as its fee (Tr. 98). Financial management consultation is the only other service available to a school from SS. This additional service is rendered for an additional fee (CX 75; Tr. 165).

8. SS, incorporated on December 13, 1955 as a capital stock company, is not connected with any government agency or public nonprofit organization. SS's board of directors, which initially consisted of Frank K. Smith, president, Wendell B. Maroshek, vice president, Alan Y. Cole and Marion Bardes (who was elected in March 1956), met on the average of five to six times per year to establish the policies for and participate in the operations of the corporation (Tr. 1144, 1147, 1168; CX 1-E). As SS expanded it needed more money and full-time management (Tr. 139, 1166-67). Respondent Melzac provided both the additional capital and full-time management and became associated with SS in May or June of 1958 (Tr. 224-25). At that time Melzac received all of the Class A voting stock of SS (Tr. 139, 197), became chairman of the board of directors, and replaced Frank K. Smith as president (Tr. 137-38). The other shareholders of SS re-

ceived Class B nonvoting stock. These other stockholders did not disassociate themselves from SS's activities after Melzac became the chief operating officer (Tr. 137).

9. Other than the replacement of Frank K. Smith with Vincent Melzac as president and the addition of Stephen Hartwell and Emory Klineman (who became stockholders in SS after Melzac took over the presidency) to the board of directors, there has been no change in the continuity of management or composition of the board of directors of SS for the past six to eight years (Tr. 137-38, 197, 1168). The policies of SS were always established by its board of directors. This practice did not change after Melzac became president (Tr. 1147, 1168).

10. SS does not become involved in the procedures or operating practices of the schools whose installment paper it purchases (Tr. 163-64, 1147, 1150, 1168, 1180, 1193-94, 1230-31). SS does not involve itself with any of the schools' management or credit policies, internal curricula or their advertising. SS does not pay any of the cost of a school's advertising and never participates in any school's advertising campaign. SS never advertises on its own account (Tr. 190). No members of the board of directors of SS, with the exception of Melzac, operate a school (Tr. 197).

11. On June 1, 1965, SS entered into a contract with the Stephen Corporation (CX 75), which is identical to that which SS has with the other schools throughout the United States from which it purchases installment paper (Tr. 69, 165-66). SS's total volume of business with the Stephen Corporation in 1967 is estimated between \$200,000 and \$300,000 (Tr. 1693). SS's estimated volume for 1967 with all its schools is between three and three and one-half million dollars in notes receivable (Tr. 141-42, 1695-96).

12. No contractual relationship exists between SS and respondent Cinderella Career and Finishing Schools, Inc., the licensing corporation (Tr. 166).

13. There is no evidence in this record that SS disseminates advertising for or on behalf of respondent Stephen Corporation or respondent Cinderella Career and Finishing Schools, Inc. Barbara Solid, the sales manager for the Cinderella Career College and Finishing School of Washington, D.C., operated by the Stephen Corporation, is responsible for selecting and placing the Cinderella school's advertising (Tr. 229, 262-64).

14. Respondent Cinderella Career and Finishing Schools, Inc., a corporation doing business under the laws of the District of Columbia, at 1100 Vermont Avenue, N.W., Washington, D.C., franchises for a fee a system of operating and developing self-improvement, finishing, mod-

eling and business career schools (Tr. 157-58). It supplies its franchisees with advertising material, curricula, manuals, instructional devices and related materials necessary to operate such a school (Tr. 43; CX 74). The franchising corporation may authorize a licensed school to use the name "Cinderella" in the name under which it does business. The franchising corporation may furnish consulting and other services to its franchisees (Tr. 43; CX 74). Some of the allegedly deceptive advertisements in evidence in this proceeding were made available by the franchising corporation to the Cinderella school operated by the Stephen Corporation. In addition, the franchising agreement (CX 74-a) provides that the franchisee shall not substantially depart from the substance of the curricular material furnished by the franchisor and that the franchisee shall provide the franchisor with copies of all advertising used by the franchisee in connection with the promotion of the school.

15. Vincent Melzac owns all of the stock of the franchising corporation but he is neither an officer nor a director of the franchising corporation. Melzac has assisted in formulating the policies of and overseeing the operations of the franchising corporation since its incorporation on December 3, 1963 (Tr. 43; answer of respondent Cinderella, p. 8).

16. Respondent Stephen Corporation, doing business under the laws of the District of Columbia, at 1100 Vermont Avenue, N.W., Washington, D.C., operates the Cinderella Career College and Finishing School at 1219 G Street, N.W., Washington, D.C. The Cinderella school was franchised by the franchising corporation on June 1, 1965 (Tr. 44; CX 74). This school had previously been owned and operated by Strom-Wash, Inc., but the franchising corporation terminated the Strom-Wash, Inc. franchise on March 22, 1965 (Tr. 81-82, 85).

17. In the course and conduct of its school the Cinderella school operated by Stephen disseminated advertisements concerning the education which it offers. The advertisements appear and have appeared in newspapers of general interstate circulation. They and mailers and brochures have also been sent by direct mail to persons in the several states and in the District of Columbia. Specimens of such advertising, flyers and brochures as are being challenged in this proceeding are in evidence as CXs 5-48, inclusive, CX 53 and CX 73.

18. Respondent Melzac has owned all of the Stephen Corporation stock since it was incorporated in May 1965. He formulates, directs and controls its policies (answer of respondent Stephen Corporation, p. 8).

19. The following chart graphically depicts the relationship of the various respondents to each other.

543

Findings

Docket 8729

Vincent Melzac

School Services, Inc.	Cinderella Career & Finishing Schools, Inc.	Stephen Corporation
Mr. Melzac owns all of the voting stock and is president.	Mr. Melzac owns all of the stock.	Mr. Melzac owns all of the stock.
Purchases installment paper from various schools, including Stephen's.	Mr. Melzac assists in and formulates the policies of and oversees the operations of Cinderella.	Mr. Melzac formulates, directs and controls its policies.
	Cinderella franchises the operation of a number of schools throughout the country.	Operates, pursuant to a franchise from Cinderella Career & Finishing Schools, Inc., the Cinderella Career College and Finishing School.
	Cinderella makes advertising and other material available to its franchisees.	Uses and distributes the questioned advertising material, much of it made available by Cinderella.

20. The Cinderella school offers courses of instruction in finishing, fashion merchandising, secretarial, professional modeling, IBM and air career. Fashion merchandising, secretarial, professional modeling, IBM and air career are career courses designed to teach a student (in almost all cases a high school graduate) a particular skill or trade that is in great demand by industry, in a relatively short period of time, and to teach such student how to improve her looks, speech, bearing, manner, poise and appearance as part of her overall qualifications for a job. They are designed to meet the demands of the economy for skilled and attractive labor (Tr. 53-54, 65, 71, 244).

21. "Finishing" is not a "career" course. Essentially, it endeavors to train the pupil in self-improvement (Tr. 240). In the finishing courses the Cinderella school teaches visual poise, makeup, hair care and design, voice and drama, personality, social graces, ballroom dancing, wardrobe, figure coordination and fashion show (CX 79). Finishing courses are structured for students of all ages, regardless of their career interests, vocation, educational or social status (Tr. 73). The "finishing" curriculum is such that a student, with proper counseling, may enroll for as many or as few hours of schooling as her

personal desires or needs dictate (Tr. 175-76). The "finishing" courses which are part of the "career" courses are designed to meet the specific demands of the industry involved, *i.e.*, persons interested in airline or merchandising careers need personal attractiveness as one of their qualifications.

22. Cinderella's course in fashion merchandising costs \$1,790. It is a full daytime program, taught Mondays through Fridays from 9:30 a.m. to 4:30 p.m. for nine months. There is, in addition, a cooperative fashion merchandising course which contemplates that the student will attend school for three days per week and work three days a week as a sales girl in a department store. This course requires 18 months to complete. In addition, there is such a course which is taught in the evenings only—for two years. A Cinderella student may, for \$975, register for a six months' course which consists of seven subjects instead of the full curriculum (Tr. 261, 272, 941). As of July 2, 1967, Cinderella had six full-time day students, thirteen cooperative students, and nine night students (Tr. 944-45).

23. The Cinderella school offers a student a choice between a regular or an executive secretarial program (Tr. 1001-02). The regular secretarial program costs \$990 and is taught five days per week, from 9:30 a.m. to 4:30 p.m. for six months (Tr. 1018). The executive secretarial program costs \$1,490 and requires nine months' full-time schooling (Tr. 1019).

24. Cinderella's professional modeling course offers teaching in the finishing curriculum outlined on the back side of CX 79 (Tr. 112-13). A professional modeling student must be able to perfect what the finishing student learns on an elementary basis. In addition to concentrating on "makeup," "posture," "wardrobe" and "figure control," the professional modeling student may select advanced courses in specific areas, such as TV modeling, photographic modeling and advanced fashion modeling (Tr. 274-75; CX 41; CX 79). A student interested in professional modeling may enroll for such courses ranging from 75 to 325 hours (Tr. 258).

25. The "air-preparatory" curriculum consists of the finishing subjects heretofore enumerated, and is structured by the Cinderella school for students interested in careers in the airline industry (Tr. 59-60, 178-79). In June 1967 the air preparatory program was enlarged into what is now the "air career" program (Tr. 59). The curriculum of the air career program provides training in many facets of the airline industry. Among other things, it is designed to increase a student's chance to be selected for a position with the airline of her choice (Tr. 1475, 1668-69). In addition to the "finishing training," students in

the air career program are taught the theory of flight, airline terminology, basic theory, Federal Aviation Regulations, the functions of the Civil Aeronautics Board and stewardess and reservationist procedures (Tr. 1474-75, 1698).

26. An applicant for enrollment in a career curriculum at the Cinderella school is usually required to be a high school graduate or have a high school equivalency certificate (Tr. 71, 244). Students successfully completing "career courses" receive Cinderella's certificate or diploma at graduation (Tr. 918).

27. The Cinderella school's courses are sold by field representatives who solicit prospective students in their homes (Tr. 49) and by Cinderella counsellors who visit high schools (Tr. 231). Cinderella obtains its leads through the direct mailings and the newspaper advertising heretofore referred to. It also uses television and radio to a limited extent (Tr. 50-51). Cinderella representatives lecture to high school students at their schools. Interested students are encouraged to mail cards in to the school, indicating their vocational and other interests.

28. Barbara Solid, the sales manager for Cinderella, is responsible for hiring, training and firing sales personnel; for advertising in newspapers and other media; and for obtaining students for the Cinderella school, screening them, seeing that they are properly counselled as to the curriculum best suited to their needs and for actually enrolling them (Tr. 229, 255, 262-64). Nine women, one man, and one high school lecturer are on Cinderella's sales staff (Tr. 231). The sales personnel have backgrounds in sales plus some experience in one of the career fields (Tr. 230).

29. Obtaining jobs for Cinderella students and graduates is the joint responsibility of Eugene Byron, a Cinderella employee who runs the modeling agency, and the directors of the various career programs heretofore named (Tr. 88, 921, 998).

30. The advertisements distributed by respondents are primarily directed to female high school seniors or those who have recently graduated from high school, roughly, girls about eighteen years old and older. Some of the Cinderella advertising does attract females younger than eighteen and older than recent high school graduates. These are persons chiefly interested in professional modeling as a career. Some of those attracted by the Cinderella advertisements are interested in its self-improvement courses.

31. Few of the females who respond to the Cinderella ads appear to have had any formalized, institutionalized education beyond the high school level, and the deceptiveness, if any, of the Cinderella ad-

Findings

79 F.T.C.

vertisements must be judged, therefore, by the impression they create on female high school seniors and young post-high school females.

32. During the course and conduct of their business respondents disseminate advertisements which contain the statement "Approved by School Services Inc., Washington, D.C., to extend education loans." It is undisputed that respondents do not make educational loans in the traditional sense of that word (Tr. 69). Rather, as a result of the agreement between the Stephen Corporation and School Services, Inc., it is possible for a student to pay for her tuition on an installment basis by entering into an installment contract (Tr. 67). The record is clear, however, that at no time do respondents make educational loans to students as represented by the above statement.

33. In December of 1965 and early 1966 Vincent Melzac met a number of times with Jean F. Green, an investigator for the Federal Trade Commission, to discuss the advertising and business practices of respondents (Tr. 1656). Mrs. Green suggested that the legend "Approved by School Services Inc., Washington, D.C., to extend educational loans" be changed to "Approved by School Services Inc., Washington, D.C., to extend budget plans" (Tr. 182). Vincent Melzac complied with this suggestion, although at the time he thought, and still thinks, that there is no distinguishable semantic connotation between the two phrases (Tr. 66, 182). Subsequent to the time that this change had been effectuated, however, a number of advertisements still appeared containing the old legend (Tr. 1459).

34. The statement "Approved by School Services Inc., Washington, D.C., to extend education loans" or "Approved by School Services Inc., Washington, D.C., to extend budget plans," which appears in most of respondents' advertisements with the implied consent of School Services, Inc., also represents that School Services, Inc. is a government agency or nonprofit organization that has officially approved Cinderella Career and Finishing School or the courses offered by such school. The record is clear, however, that School Services, Inc. is not a government agency or public, nonprofit organization.

35. Also disseminated by respondents is the following advertisement:

WHAT IS THE CINDERELLA SECRET?

[Photograph of
Miss Batts]
Dianna Batts
Miss U.S.A. of the Miss
World Contest A Cin-
derella girl

[Photograph of
Miss Ness]
Carol Ness
Miss Cinderella 1965 Win-
ner of all-expense trip to
Paris, France

543

Findings

YOU TOO CAN BE A CINDERELLA GIRL!

Our unique world-famous Finishing Training can transform your dreams into reality, can make you charming, lovely, poised, confident, at ease wherever you go, whatever you do.

TRAINING FOR EXCITING CAREERS IN

Executive Secretarial

Professional Modeling

Fashion & Retailing
Airlines

BE THAT SPECIAL GIRL The girl looked at and admired by all * * * The girl who gets ahead in Business! Send for our FREE "Magic Door" brochure. Mail by tomorrow and we'll include Free our fascinating booklet '101 Ways To Be More Attractive.'

Official Washington Headquarters for the Miss Universe Beauty Pageant

JOB PLACEMENT SERVICE

DAY AND EVENING CLASSES

New Classes Forming—Enroll Now!

CINDERELLA CAREER AND FINISHING SCHOOL

1221 G St., N.W., Wash., D.C. Phone 628-1950

Please send me your Free brochures. I have checked my interest below.

☐ Secretarial ☐ Pro. Modeling ☐ Fashion & Retail Buying ☐ Airlines
☐ Preparatory ☐ Finishing ☐ Self Improvement ☐ Miss Universe Entry Blank.

Name _____ Age _____

Address _____

City _____ State _____ Phone _____

Approved by School Services, Inc., Washington, D.C. to extend education loans.

This advertisement does not state that Miss Batts and Miss Ness are graduates of the school. It merely states that they are "Cinderella girls," which, by virtue of having attended the school, they are. The record does not delineate precisely which part of their success is due to their natural aptitudes and which part resulted from their association with the school. The representations made with respect to Miss Batts and Miss Ness in the various advertising and promotional material of respondents are in fact true.

36. The following are illustrative examples of the various advertisements, disseminated by respondents, which offer careers in the airlines industry.

An advertisement in the "Educational Directory" of *The Washington Post* on Sunday, September 10, 1967, under the heading "Air Career," reads:

Findings

79 F.T.C.

CINDERELLA CAREER COLLEGE
1219 C St. N.W. 628-1950

Air Career Training is now available at Cinderella Career School, 1219 C Street. Prepare for a Stewardess or Reservationist position. Call 628-1950 for a career analysis. (CX 155.)

The second advertisement (CX 154) depicts a smiling young lady in what appears to be a stewardess uniform, and states:

free brochure on an airline career call 628-1950 or clip and mail today
Corp. 1967 Cinderella C. & F. School, Inc.

Cinderella
Career and Finishing School
1219 C St. N.W.

Please send me the free brochure on Airline Preparatory Career training. I am
a high school graduate ☐ I will graduate High School year _____
Name _____
Address _____
City _____ State _____
Zip _____ Age _____
Phone _____

Approved by School Services Inc. To Extend Budget Plans

Respondents also distribute a pamphlet (CX 41) entitled "Wonderful things happen to a Cinderella Girl!" which, among others, contains the following paragraph:

Miracles after sundown—Drab little typist becomes lovely airline stewardess! Overweight order clerk now a fashion counselor! "No-date" steno becomes belle of the office! High school graduate wins success in television! Middle-age widow looks ten years younger—gets exciting new job! Shy librarian gets three raises and a beau! Factory worker becomes studio receptionist!

In addition, many other advertisements provide a prospective student with a check list of subjects of interest to her, one of which is "Airline," "Airlines Prep." or "Airline Preparatory."

By these various statements respondents represent that their course of instruction in "Airline" will qualify a graduate thereof to assume the position of airline stewardess or other positions in the airlines industry.

It has been stipulated (stipulation June 29, 1967) that the "airlines maintain their own schools in which they train applicants for employment as airline stewardesses and said companies require that such applicants attend the school operated by or under the control of such airline in order to qualify for a job as an airline stewardess; that none of the students of Cinderella Career College and Finishing School would, merely because they had completed a course of instruction in,

Cinderella Career College and Finishing School, qualify for a job as an airline stewardess."

37. Respondents further disseminate a variety of advertisements and pamphlets which offer a career in retail buying. For example, respondents offer:

Comprehensive training in the many facets of fashion careers. Includes retailing, buying, sales promotion, advertising, display and practical field trips. FASHION IS A YOUNG PEOPLES FIELD. In no other area can a woman assume executive status at such an early age. Fashion is a stable field, the third largest in the U.S. High School Diploma or equivalent is required. SEND FOR BROCHURE. NO OBLIGATION. (CX 16-b through CX 21; CX 155.)

TRAINING FOR EXCITING CAREERS IN Executive Secretarial—Professional Modeling—Fashion & Retailing—Airlines. (CX 11; CX 12; CX 13; CX 14.)

CAREERS! The Cinderella Career and Finishing School offers * * * careers in EXECUTIVE SECRETARIAL, PROFESSIONAL MODELING, FASHION MERCHANDISING, RETAIL BUYING. (CX 6; CX 22; CX 26.)

WE'VE GOT THE CINDERELLA SECRET Come in and find out what it is. Our world famous Cinderella Finishing Training can make you poised, lovely, confident! Career Training for: EXECUTIVE SECRETARIAL—PROFESSIONAL MODELING—RETAIL FASHION MERCHANDISING—AIRLINES PREP. (CX 7; CX 8; CX 9.)

Let's take a look at some of the things we offer: *FASHION BUYER*: The position of a buyer is both responsible and rewarding. For buyers of womens' apparel, this consists of a whirlwind tour of showrooms to view the new seasons' offering in New York, Chicago, and San Francisco. Some buyers are selected to make trips to foreign markets such as Paris, Rome or London. Earnings of buyers range from \$5,000 to over \$20,000 depending upon the size and type of department. (CX 43.)

FASHION CAREERS

All our lives are touched by fashion, for fashion is everywhere. There are fashions not only in clothing but in cars, furniture, interiors, and foods. Fashion is a fast moving world that needs people in administrative capacities who are alert, and welcome the excitement of change.

The Fashion Career Course at Cinderella's is a varied program touching upon many facets of fashion careers, because we feel many young people are not exactly sure of what they wish to do. Some may have a latent talent for organization—some have an undiscovered knack for fashion "know-how"—some, perhaps, a flair for writing.

The curriculum and our faculty (all university graduates with retail experience) is selected to bring out these hidden talents and help you find your niche in the remunerative field of fashion—where advancement is quite rapid.

Our students observe and analyze the activities of the "F" Street stores. They prepare assignments from window displays, sales promotion campaigns, advertising and business activities. Thus they gain from the actual experience of others already in the field. In addition to preparing reports, they conduct meetings and learn the importance of getting along with people. Fashion is a young people's field. In no other area can a woman assume executive status at such an early age. And, of course, along with executive status comes financial reward. Fashion

Findings

79 F.T.C.

is a stable field! It is the third largest industry in the United States, following only steel and food.

Opportunity in retailing, just one segment of fashion, is unlimited. With the exploding population and resultant opening of Branch Stores across the country, new jobs are constantly being created. One half of retailing's top executives are under 35 years of age. Forty percent of retailing executives are women. The average buyer earns between \$10,000 and \$20,000, some earn more. (CX 44.)

By these statements respondents represent that completion of its fashion merchandising course or fashion career course will qualify the student to assume the position of buyer at a retail establishment. It has been stipulated (stipulation June 29, 1967) that completion of a course of instruction at the Cinderella Career and Finishing School will not qualify a student for a position as buyer in a retail establishment.

38. Following are some illustrative examples of statements contained in respondents' advertisements and promotional material dealing with the availability of a job placement service for students and graduates of the school.

JOB PLACEMENT SERVICE (CX 47-a.)

FREE JOB PLACEMENT (CX 53.)

Employment placement service! Assistance in finding part-time employment while attending school. Jobs are obtainable by most qualified graduates through our Job Placement Service * * *. (CX 35; CX 38.)

* * * Assistance in finding part-time employment while attending school. Jobs are obtainable by most qualified graduates through our Employment Placement Service * * *. (CX 42.)

Your contract with Cinderella Career College doesn't end at graduation. Graduates are always welcome for assistance in change of employment, or for consultation regarding progress.

Because recognition and advancement are rapid in retailing, new job opportunities and promotions present themselves constantly. (CX 44.)

JOBS ARE OBTAINABLE BY MOST QUALIFIED GRADUATES THROUGH OUR EMPLOYMENT PLACEMENT SERVICE * * *. (CX 72.)

By these statements respondents represent that they find jobs for their students in almost all cases. The Cinderella school has placed in jobs four out of the five students graduating in 1967 from the fashion merchandising course (Tr. 919-24). Of the thirteen fashion merchandising cooperative students, ten obtained employment through the school and three chose to remain in the jobs in which they already were (Tr. 959). Three 1966 graduates from Cinderella's fashion merchandising course obtained jobs through Cinderella (CX 107). Two graduates of Cinderella's secretarial program in 1967 were placed in jobs (Tr. 996-98). Respondents are unable to assist students in finding positions as airline stewardesses or retail buyers since none of respondents' students or graduates qualify for these positions.

39. The complaint alleges that respondents have misrepresented that the graduates of various of respondents' courses of instruction are thereby qualified to assume executive positions in the fields for which they have been trained by respondents. There is no evidence in the record from which a definition of the word "executive" could be fashioned. However, it appears that in the field of fashion merchandising, wherein a majority of the placements have resulted, the status of "executive" is attained more readily than it might be in other fields of endeavor. (Tr. 994-98.) The position of trainee bridal consultant with The Hecht Company in Washington, D.C. and the position of assistant buyer are characterized as junior executive or executive positions. (Tr. 973-75, 994.)

40. Various of respondents' advertisements and promotional material represent that Cinderella Career and Finishing School is the official Washington, D.C. headquarters for the Miss Universe Beauty Pageant. Mr. Sidney Sussman, president of Miss District of Columbia, Inc., a beauty pageant promotion organization, owns the Miss Universe franchise for Maryland, the District of Columbia, and Virginia. Mr. Sussman testified:

[T]he word "headquarters" is a complicated word. Technically any place, any sponsor who is involved with me could be a headquarters. But in my own specific terminology my official headquarters is where I do physical things, and the only place that I do physical things, and I will get into what physical things in a minute is at Cinderella. Physical things are, I have meetings there. I show documentary movies there. I use their, some of their, staff in a secretarial capacity. I have training there. We sometimes have preliminary rounds there. In other words, that is where the action is. That is why I, and I alone, have designated it as my official Washington headquarters. There isn't anybody else in the whole world who can designate my franchise as headquarters except me because I own it. Now I can say that every one of McDonald's 35 locations is a headquarters, which is true. You can, when they were a sponsor, you could go to any of those places and pick up an entry blank. That is a kind of headquarters. You could have gone to any one of Vincent et Vincent's 73 locations and also picked up an entry blank. That is a kind of headquarters. And you could have gone to any of the other places that are in that printed entry blank that you have there that have given prizes, and also picked up an entry blank. But picking up an entry blank and having a lot of physical operation are two different things. And, therefore, because Cinderella's operation is a big operation, and they advertise heavily, and this is essential to finding good contestants, these winners don't come out of the blue, I designated Cinderella my headquarters for those reasons, and it seems to me that I own the property, I can designate who I want to be my headquarters. They have been it since 1964 and as far as I know they will be until they don't want to be it any more. So long as they keep renewing their contract with me. (Tr. 510-11.)

To the extent that other locations are designated as official headquarters the Cinderella Career and Finishing School is not the one and only official headquarters for the Miss Universe pageant.

41. Respondents also operate under the trade style "Cinderella Career College and Finishing School," thereby representing that the school is a college. To the extent that the word "college" means a post-high school institution of higher education which either confers degrees or offers course work which would be transferable to other institutions in varying degrees, the Cinderella Career College and Finishing School is not a college (stipulation June 21, 1967). It has also been stipulated that students completing courses of instruction at the Cinderella Career and Finishing School operated by the Stephen Corporation are not awarded any academic degrees and that none of the corporate respondents have the power or authority to confer degrees or admit persons to degrees (stipulation June 21, 1967).

42. Respondents also operate a variety of beauty contests. These various contests are open to anyone and it is not necessary to be a student at the Cinderella school in order to enter (Tr. 738). The qualifications to enter the Miss D.C. Beauty Pageant are set out in the official entry blank, which states that "Contestant must be of good character and possess poise, personality, intelligence, charm and beauty of face and figure" (CX 36). There is insufficient evidence in the record upon which to base a finding that when a prospective student first visits the school she is frequently led to believe that she is qualified to compete in, and has a strong possibility of winning, such contests if only she would sign up for the courses given by respondents which will bring out the best in her.

43. A prospective student with whom an interview has been arranged in advance completes an application given to her by the receptionist when she first arrives at the school (Tr. 266). The prospective student is then escorted into a counsellor's office and following a general discussion is taken on a tour of the school (Tr. 270). Thereafter the prospective student is given a beauty analysis by the counsellor (Tr. 233). This consists of good grooming pointers. The prospective student is then told about the courses of instruction available (Tr. 233). Interviews for prospective students interested in taking a "finishing course" take approximately 45 minutes. "Career course" interviews take approximately 1½ hours (Tr. 233-34).

44. Mrs. Sandra Roth, who had some previous experience as a photographic model, testified (Tr. 609-43) that she enrolled in the school upon the assurance that she would have no problem getting jobs as a model. In addition, she was told that she would get jobs during

her schooling, resulting in possibly sufficient remuneration to help her make the monthly payments. During cross-examination Mrs. Roth testified that before her interview at Cinderella Career and Finishing School she had an interview at the John Robert Powers school:

Well, this is sort of different because John Robert Powers is strictly a finishing school. They don't give jobs, you know. They don't put you out as a model. They just give you finishing courses instead of a modeling course. (Tr. 623.)

While attending school Mrs. Roth obtained three jobs through the school. Two of these jobs paid \$31.50, after payroll deductions, for approximately 8 hours each. The other job "paid" a wig for 4 days of modeling, from 10 a.m. to 7 p.m., or a total of 36 hours.

After her graduation Mrs. Roth regularly called the school for a period of three to four months concerning the availability of jobs, but without success, with the exception of teaching one Saturday class at Cinderella for \$3.50 an hour. She finally accepted a full-time position at the front desk of the Sheraton Park Hotel in Washington, D.C., and never did receive a position through Cinderella Career and Finishing School in her chosen field—professional modeling.

Mrs. Roth was once called by the school for an interview at an hour's notice, which she could not accept. Having accepted the position with the Sheraton Park Hotel she also informed the school that she would need at least two days' notice for any assignments. Mrs. Roth subsequently became pregnant and informed the school that she would be unavailable for any assignment.

45. Mrs. Vera White (Tr. 643-81) and her daughter Janis, 16 years old at the time, were interviewed at the school on May 7, 1966. Janis was interested in professional modeling. The Cinderella counsellor discussed the field of modeling and the courses which Cinderella offered. Mrs. Vera White enrolled her four daughters in the school for a total contract price of \$1387.05, \$1040 of which was for Janis (CX 88-A; CX 89; CX 90-A). In response to the question whether anything was said during the interview about Janis getting jobs Mrs. White testified:

The lady, Mrs., I don't know her name, the light-haired lady told, she said after September she [Janis] would be making her own money, she would be out modeling, and I figured she would be modeling at some of the stores, you know, local stores, I didn't think she would be on TV and all of that, and she said—I told her that the course is rather high. She said "oh, don't worry about that." She would be making her own money and this would help pay for her course, and I said good. This is the thing that caused me to go ahead with it, you know, because I figured she would be modeling and making her own money locally. (Tr. 650-51.)

Janis received one student group assignment—modeling hats on the street—for which she did not get paid.

Sometime during September Mrs. White was invited to come to the school, ostensibly for a progress report on Janis. While there, however, an effort was made to sell her additional courses of instruction for Janis at a time when Janis had not even completed one-fourth of her original course and had not even received one paying modeling assignment.

Shortly thereafter, being discouraged about not getting any jobs, Janis discontinued her course. On this point Mrs. White testified on cross-examination:

She [Janis] got discouraged because she wasn't getting paid for it and that was the reason she took it. (Tr. 677.)

46. Mrs. Robin North testified (Tr. 739-746) the following:

* * * So, and he [one of respondents' sales representatives] said that the average model would make from \$10 to \$15,000 a year, but he didn't come right out and say that I would be the average model, but he left the impression, he talked as if I would be a hit, I would make it. I didn't have any word, I just thought I would make it and get it and wouldn't have to worry.

By Mr. Freer:

Q. Did he mention any Cinderella graduate who made the big amounts?

A. He showed us a newspaper article with several models on the top, fashion models, and one was from the Cinderella School of modeling in Chicago and that was Wilhelmina and she was a top model.

HEARING EXAMINER GROSS: Is that right, Robin?

THE WITNESS: I guess. She made approximately \$85,000 a year. (Tr. 743.)

47. Miss Gloria Lancaster (Tr. 748-63) was accompanied on her interview at the Cinderella Career and Finishing School by her aunt, Mrs. A. Donelson. Miss Lancaster, who subsequently enrolled in a professional modeling course and attended eight months, gave the following testimony:

A. Yes. She told us that during the time we were in the school Capitol Fur Salon—I don't know whether it was a contract or what, but she mentioned us modeling furs in Capitol Fur Salon, but nothing ever came of it. (Tr. 752.)

Miss Lancaster never obtained any kind of a position through Cinderella Career and Finishing School. Miss Lancaster did not complete her course of instruction and withdrew from Cinderella Career and Finishing School.

48. Mrs. Anne Donelson, Miss Lancaster's aunt who accompanied her on her interview and who signed her contract with Cinderella Career and Finishing School, corroborated this testimony (Tr. 763-74). Mrs. Donelson stated that during the interview they were told that modeling jobs would be assigned to these students.

In response to the question as to her understanding whether students would get paid for any modeling assignments, Mrs. Donelson testified:

A. Well, it was my understanding that they would be, although I can't recall now whether the subject of salary or payment came up in the course of the conversation. She did say, however, that they would be going out, as I said, on these particular assignments, and that they would be used as they got along in advanced training, and then, of course, they would place them for jobs when they had finished the course. So I assumed that naturally they would be salaried assignments. (Tr. 769-70.)

49. Mr. Andrew M. Egnot (Tr. 775-80) enrolled his daughter Michelle for the minimum 25-hour finishing course, which she completed. In answer to the question whether any mention was made during the interview of the school obtaining jobs for its students, he testified:

A. There was some mention, I think, of experience and then some part-time. But this was one thing that I did try to find out about, just how many jobs were available, and whether they were part-time or full-time. I was told that as you went along, depending upon, of course, your potential, and depending upon yourself, these jobs would come along. (Tr. 779.)

Mr. Egnot's questions as to the availability of jobs were never answered specifically; however, he was left with the definite impression that jobs would be forthcoming. His daughter never did obtain a position or an assignment through Cinderella Career and Finishing School.

50. Miss Penny Alexander (Tr. 785-826) went to Cinderella Career and Finishing School in response to an advertisement stating "Model-type girl wanted," expecting to be interviewed for a job. She never got a job but instead was enrolled in the school. She went to only one class and did not make any payments on her contract because she felt she had been tricked into entering the contract.

THE WITNESS: I had come down there looking for a job, and I got something else instead. (Tr. 816.)

51. Mrs. Ruth A. Kahkonen (Tr. 830-853) was interested in professional modeling and enrolled in the school. She testified that the promise of jobs during the interview influenced her to enter the contract—"The money sounded very good" (Tr. 833). Mrs. Kahkonen got two jobs while attending the school, neither one of which had anything to do with professional modeling. One of these jobs consisted of handing out litter bags at a stadium, for which she received \$13. Mrs. Kahkonen did not finish her course because she was not getting the jobs which had been promised to her and due to personal problems.

52. Miss Opal S. Boyd (Tr. 854-63), who was interested in professional modeling, testified that during the interview she was told that

Findings

79 F.T.C.

a job would be obtained for her while she was attending the school and that after she had taken 50 hours of modeling she would be prepared for a part-time modeling job. Miss Boyd completed her course but never obtained a job while attending classes or thereafter through Cinderella Career and Finishing School.

53. Miss Charissa Craig testified (Tr. 866-88) that while attending a teen fashion show she was approached by a representative of the Cinderella Career and Finishing School to see if she would be interested in taking a course there because she would make \$60 an hour modeling. As a result, Miss Craig, accompanied by her mother, went to the school for an interview, during which it was again represented to her that she would start at \$60 an hour while she was still attending classes.

Not entirely convinced that she should do so, Miss Craig's mother was persuaded to sign the enrollment contract upon the oral representation that it could be cancelled should she change her mind. The Craigs did change their minds and subsequently managed (not without some difficulties) to have their contract cancelled and lost only a \$5 deposit.

By these statements respondents represent that completion of one of their courses will enable the applicant in most cases to obtain a better job through respondents' many contacts in the business world, which representation, according to the testimony contained in the record, is false.

54. The enrollment contract of the Cinderella Career and Finishing School states that the combined registration-tuition fee for any of its courses is not refundable. Above the signature line the contract states in larger than normal print "Non-cancellable." The record in this particular proceeding is insufficient for a finding whether prospective students were or were not given sufficient opportunity to read and understand the various contractual provisions.

According to the testimony in the record, prospective students were at times exposed to a succession of up to four of respondents' representatives during the course of an interview. One witness testified (Tr. 873) that the interview lasted three hours and culminated only upon the signing of the enrollment contract. Respondents' sales offices are equipped with listening devices which permit the monitoring of the interview in another office. Frequently the sales interview with a prospective student is in fact monitored by a person in another office.

The evidence and testimony contained in the record, however, is insufficient for a finding that respondents during the course of an interview subject the potential student to constant pressure to get the applicant started right away on one of respondents' courses of study

548

Order

and present various documents, including a negotiable promissory note, for said potential student's signature without revealing the negotiable and noncancellable nature thereof or allowing sufficient opportunity to permit the reading or careful consideration thereof.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein.

2. This proceeding is in the public interest.

3. Through the use of the aforementioned advertisements and the statements and representations therein contained respondents have represented, directly or by implication, contrary to fact, that Cinderella Career and Finishing Schools grant educational loans, that Cinderella Career and Finishing Schools or the courses it offers have been officially approved by a government or nonprofit organization, that respondents offer a course of instruction that will qualify students to be airline stewardesses or for positions as buyers for retail stores, and that respondents find jobs for their students in almost all cases through their job placement service.

4. In addition, respondents have frequently falsely represented, through their agents, representatives and employees, for the purpose of inducing prospective students to enroll for one or more of the courses of instruction offered by the school, that the student, in most cases, either while attending the school or upon graduation, will obtain a better job through Cinderella Career and Finishing Schools.

5. The dissemination of the aforementioned false and misleading advertisements and the use of other representations constitute unfair and deceptive acts and practices in commerce, as "commerce" is defined in the Federal Trade Commission Act, and violates Section 5 of said Act.

6. In the light of finding 34 the Commission concludes that the practice of respondent School Services, Inc., in permitting its name to be used in the manner indicated is highly questionable. However, it is further concluded that an order prohibiting the practice may not be necessary and therefore, in order to provide respondent School Services, Inc. an opportunity to voluntarily correct this practice, a cease and desist order will not be entered directed to this respondent at this time.

ORDER

It is ordered, That respondents Cinderella Career and Finishing Schools, Inc., a corporation, and Stephen Corporation, a corporation trading as Cinderella Career College and Finishing School, or under

any other name, and their officers, and Vincent Melzac, individually and as an officer or controlling stockholder of the aforesaid corporations, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of courses of instruction or any other service or product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

1. Representing, directly or by implication, that they or any of them extend loans to students when in fact only credit is extended to an enrollee through an installment contract.

2. Representing, through the use of the name School Services, Inc., Washington, D.C., or any other name or names similar thereto, or otherwise, that any of respondents are in any way connected with a governmental or nonprofit organization, or that any of respondents' schools or any course offered by any such schools have been approved by any government agency or nonprofit organization.

3. Representing, directly or by implication, that respondents or any of them offer courses of instruction which qualify students to be airline stewardesses, and misrepresenting, directly or by implication, that respondents or any of them offer courses of instruction which qualify students to be buyers for retail stores.

4. Representing, directly or by implication, that respondents or any of them find jobs for almost all of their students or graduates, or otherwise misrepresenting the availability of jobs through any job placement service, or through respondents' contacts in the business world.

5. Using any false inducements or representations to obtain enrollees for any of respondents' courses or to obtain the signature of any such enrollee on documents which obligate any such enrollee to expend or pay any money.

6. Entering into any agreement or arrangement with any franchisee or establishing any franchise unless such franchisee is furnished with a copy of the order herein and instructed in writing that a condition of his franchise is the refraining from engaging in any of the acts prohibited by the within order.

It is further ordered, That the complaint against School Services, Inc., a corporation, be, and it hereby is, dismissed.

It is further ordered, That the allegations contained in Paragraph Five, subparagraphs 3, 7, 8 and 9, and Paragraph Seven, subparagraph 2 of the complaint be, and they hereby are, dismissed.

Complaint

It is further ordered, That respondents' request to file a supplemental brief be, and it hereby is, denied.

It is further ordered, That respondent Vincent Melzac's motion to dismiss the complaint be, and it hereby is, denied.

It is further ordered, That respondents' Cinderella Career and Finishing Schools, Inc., a corporation, and Stephen Corporation, a corporation trading as Cinderella Career College and Finishing School, and Vincent Melzac 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 set forth herein.

Commissioner Dixon not participating.
