
IN THE MATTER OF
FUQUA INDUSTRIES, INC., ET AL.

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

Docket C-2626. Complaint, Jan. 21, 1975 - Decision, Jan. 21, 1975

Consent order requiring an Atlanta, Ga., vocational school operator and franchisor,
among other things to refund up to \$1.25 million to eligible former students;
and requiring a St. Petersburg, Fla., vocational school operator and franchisor,

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among other things to disclose designated information such as drop-out rates and positions and salaries received by graduates; to allow enrollees a 10-day period in which to affirm their enrollment contracts, with cancellation of contract; and to provide prospective franchisees with full particulars on the franchise operation in writing.

Appearances

For the Commission: *Charles L. Hall, Morgan D. Hodgson and Donald Williams.*

For the respondents: *Kirkland, Ellis & Rowe, and Arent, Fox, Kintner, Plotkin & Kahn, Wash., D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Fuqua Industries, Inc., a corporation, Space/Time, Inc., a corporation, Nationwide Acceptance Corporation, a corporation, Fortune Enterprises, Inc., a corporation, and William L. Phillips, individually and as an officer and director of Fortune Enterprises, Inc., hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Fuqua Industries, Inc. (hereinafter sometimes referred to as F/I) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3800 First National Bank Tower, in the city of Atlanta, State of Georgia.

Respondent Space/Time, Inc., (hereinafter sometimes referred to as S/T) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3800 First National Bank Tower, in the city of Atlanta, State of Georgia. All the stock of Space/Time, Inc. is owned by Fuqua Industries, Inc. Respondent S/T is now and for sometime last past has been, an advertising agency for wholly-owned subsidiaries of respondent F/I, and for sometime last past, has caused publication and dissemination of advertising material, including, but not limited to, the advertising referred to herein, to promote the sale of vocational courses of instruction.

Respondent Nationwide Acceptance Corporation (hereinafter sometimes referred to as NAC) is a corporation organized, existing and doing business under and by virtue of the laws of the State of

Delaware, with its principal office and place of business located at 3800 First National Bank Tower, in the city of Atlanta, State of Georgia. All the stock of Nationwide Acceptance Corporation is owned by Fuqua Industries, Inc. Respondent NAC is now and for sometime last past has been, a holder of commercial paper and a collection agency for respondent F/I.

Respondent F/I formulates, directs and controls the acts and practices of its said wholly-owned subsidiaries, including the acts and practices hereinafter set forth, and performed in same manner with respect to Career Enterprises, Inc. (hereinafter sometimes referred to as CE) a corporation respondent wholly-owned from June 1969 to December 1971. With respect to the acts and practices of Career Enterprises, Inc. hereinafter set forth, respondent F/I knew or should have known of the said acts and practices and failed to exercise its control to curb the said acts and practices. Alternatively, with respect to the acts and practices of Career Enterprises, Inc. hereinafter set forth, respondent F/I upon acquisition and thereafter failed to investigate the said acts and practices and, thus, failed to exercise its control to curb the said acts and practices. In Dec. 1971 CE was sold by respondent F/I to Fortune Enterprises, Inc.

Respondent Fortune Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its principal office and place of business located at 2951 34th Street South, in the city of St. Petersburg, State of Florida.

Respondent William L. Phillips is founder, president and sole stockholder of Fortune Enterprises, Inc., and was founder, director and chief executive officer of CE. Phillips formulates, directs and controls the acts and practices of Fortune Enterprises Inc., including the acts and practices hereinafter set forth, and performed in the same manner with respect to CE. Phillips and Fortune Enterprises, Inc. have the same business address.

PAR. 2. Through CE, respondents have for some time last past engaged in the formulation, development, offering for sale, sale and distribution of courses of instruction intended to prepare graduates thereof for entry-level employment in the following positions: computer programmers, keypunch operators, cashier-checkers, PBX receptionists, secretaries, medical and paramedical personnel, nurses' aides and laboratory technicians. Respondents' volume of business in said courses of instruction was substantial.

Such business was conducted by respondents by establishing company owned branch facilities which offered resident instruction in the aforesaid courses and by selling franchises to other individuals,

corporations or partnerships to operate facilities offering resident instruction in the aforesaid courses.

Respondents' branch facilities and franchised facilities offered said courses to the general public under various trade names owned and authorized for use by respondents as follows: Career Training Institute (CTI); Career Training Center (CTC); Cashier Training Institute (CTI); Key punch Academy (KPA); and (name of city) Business Institute. Additionally, respondents entered into a management-sales contract whereby training facilities were established by respondents to offer courses in medical, paramedical, nurses' aide and laboratory technician training, and designated Medical Training Centers (MTC), and thereafter sold to a third party, reserving management rights and fees to respondents for the continued operation of such facilities.

Respondents furnished the means and instrumentalities for, and placed into operation and implemented themselves, a sales program whereby members of the general public, by means of advertisements placed in broadcast and printed media of general circulation, by promotional brochures, and by means of training and supplying personnel in the operation and management of said training facilities, and by means of statements, representations, acts and practices as hereinafter set forth, were induced to sign contracts of enrollment agreements for a course of instruction of a stated length of time and for a stated tuition cost, or induced to sign contracts to purchase franchises from CE.

Respondents arranged or assisted in the arrangement of credit and deferred payment terms for the financing of said executed contracts and accepted the proceeds and revenues following therefrom or derived substantial income therefrom in the form of royalty payments from said enrollment contracts, franchise contracts and management-sales contracts.

In the manner aforesaid, respondents dominated, controlled, furnished the means, instrumentalities, services and facilities for, and condoned, approved, and accepted the pecuniary and other benefits following from the acts and practices hereinafter set forth of respondents' company branch facilities and franchisees.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents for some time last past caused said aforementioned courses of instruction to be distributed from CE's place of business to said aforementioned branch facilities and franchisees located in various States of the United States other than the state of organization of said courses. Respondents transmitted and received and caused to be transmitted and received, in the course of the sale of, distribution of and financing of their courses of instruction by said company facilities

and franchisees among and between the several States of the United States, retail installment contracts, credit applications, checks, royalty reports, monies or other commercial paper. Respondents maintained at all times mentioned herein a substantial course of trade in said courses of instruction and said franchises in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and to induce the purchase of their courses of instruction by members of the general public, respondents and their company branch facilities and franchisees and the salespersons at the branch facilities and franchisees have disseminated or caused the dissemination of, via the United States' mails or other means, radio, television, newspaper, print media, or other forms of advertising, or other means and instrumentalities which are furnished, approved or condoned by respondents. In the further course and conduct of their business, as aforesaid, respondents have caused advertisements to be published in the "Help Wanted" columns of daily newspapers' classified advertising sections. In conjunction therewith, respondents and their company facilities and franchisees have made certain statements and representations respecting the existence of specific jobs in which graduates of respondents' training facilities will be placed upon completion of training, the offering of immediate or eventual employment of qualified applicants, the existence of a substantial demand for persons possessing the skills which are taught at respondents' training facilities, the time required to successfully complete respondents' courses, the nature of placement services offered, the offering of a vocational training program specially designed for known employment requirements and the offering of a financial plan of deferred tuition payments until after completion of training.

In further course and conduct of their business, respondents operated a sales plan to market their courses of instruction by enfranchising persons to sell such courses under an "Agreement and Franchise" purporting to assign a particular location in which the franchisee could sell one or more of the aforesaid courses of instruction to members of the public.

For the purpose of inducing the purchase of CE franchises, respondents have made statements and representations in oral sales presentations to prospective purchasers and in newspaper advertisements and promotional literature respecting the aforesaid courses of instruction, the earnings and profits to be realized by selling such courses, the training or business opportunity for absentee-management arrangements, and the demand for skills taught by respondents branch facilities and franchisees.

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Typical of the statements and representations in said advertisements, but not all inclusive thereof, are the following:

A. Radio and Television

Hey, men and women of BLANK and surrounding area, are you untrained or unemployed? Medical Training Centers are now selecting many, many nurses aid trainees. * * * The first 23 people who qualify will start immediately. That's right - I said immediately.

* * * * *

* * * You need no high school diploma or experience, and there's no age limit. Don't wait. Start getting the big money and the fringe benefits and job security that only an IBM career brings.

* * * * *

Attention men and women of Grand Rapids and surrounding areas - there is now a shortage of trained personnel in the IBM field. Key punch Academy is now accepting applications for a special training program designed especially to fill these positions. * * * contact us immediately * * * call now and be job ready after a short training period.

* * * * *

Because of the tremendous need for trained IBM keypunch operators in the computer industry, (name of school) is now offering women and men in (city) and surrounding areas an opportunity to be trained * * *.

* * * * *

* * * CTI is now interviewing people to be IBM keypunch trainees. The people selected will be trained on the latest equipment and methods available * * *.

* * * * *

Need a job fast? People in (city) and surrounding areas, CTI now needs men and women to be IBM keypunch trainees.

* * * * *

Attention men and women of Grand Rapids and surrounding areas - there is now a shortage of trained personnel in the IBM field. Key punch Academy is now accepting applications for a special training program designed especially to fill these positions.

B. Newspaper

NEEDED NOW! Wanted Immediately - Key punch trainees. No experience necessary, no age limit. We will train sharp individuals.

* * * * *

MALE ORDERLY Trainees needed for Nashville area. Training to start immediately * * *.

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CALL

254-7514

Medical Training Center.

* * * * *

NURSES ASSISTANT

MALE ORDERLY

After a short training period a future prestige job awaits you in the medical field.

* * * * *

NEEDED NOW

Trainees needed in Hospitals, Clinics, Nursing Homes and in Doctor's offices in the Nashville area * * * Free job placement service assistance. Student loans available.

* * * * *

JOB OPPORTUNITIES

UNLIMITED

* * * * *

\$ HELP \$

We need ladies immediately to be trained on our latest equipment and methods as keypunch trainees.

* * * * *

* * *CTI offers intensive *individualized* instruction especially designed for you.

* * * * *

START A NEW CAREER NOW

BE JOB READY IN 8-10 WKS

* * *must be willing to start work immediately.

* * * * *

* * *FREE placement service . . . TRAIN NOW - PAY LATER * * *

* * * * *

IBM KEYPUNCH TRAINEES

Immediate openings, no age or educational requirements, we will train. Call 436-9225 NOW.

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* * * * *

NURSES AIDES

CTI is now selecting 30 nurses aid trainees for the Akron area. WE TRAIN YOU* * *

* * * * *

KEYPUNCH ACADEMY

ATTENTION! ATTENTION!

Men and Women in the Topeka and surrounding areas, KPA now needs thirty (30) people to train to be Keypunch Operators. . . If you don't have a job or you are tired of your present job, call 233-6494 to see if you qualify for one of these training positions* * *

* * * * *

KEYPUNCH OPERATOR

High School not required. No age limit. 542-7494

* * * * *

TRAIN NOW FOR GOOD

PAYING JOB OPPORTUNITIES

IN IBM KEYPUNCH . COMPUTER

PROGRAMMING.

Classes are limited. Individual Instruction.

* * * * *

HIGH SCHOOL SENIORS

OVER 260 IMMED. OPENINGS.

High school grads willing to train in a computer career. Salaries to \$145 per wk. Call Mr. Storke 654-8866, 305 W. 12 St.

* * * * *

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LIFETIME OPPORTUNITY

Own your own franchise in the
world's fastest growing business.

* Depression Proof

* Turn Key Operation

* Ideal for Husband? Wife Team

* Absentee Management Available

* Protected Franchise Area

* Minimum Cash Needed \$10,000

* Net \$10,000 to \$40,000 Per Year

Write or Call

B.A. HUTTER, V-P

CAREER

ENTERPRISES, INC.

C. Promotional Brochure

Here let us take a moment to comment upon the aspects of our advertisement which prompted your welcome query. We indicated that your first year of operation with us could produce a significant income ranging from \$15,000 to \$50,000. We mean just that, and these are net profit figures. The secret to our success is "low overhead, coupled with volume activity." This is not merely an idle claim. We have available for your inspection, certified figures on our own as well as our franchised schools. These figures reflect annual gross sales, operating costs, and net profit. Enclosed as part of this informational packet you will find information and recent figures applicable to representative schools within our system. A review of this information will readily reveal how your initial investment can be returned to you in just a few short months. This can not be said of any other business known to us.

First let us say that our offering is exactly as presented. The advertisement which prompted your query contains only true and correct details. Imagine if you will hundreds of training facilities located throughout the country, half of which are owned and operated by us, the other half operated under our franchise.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents and their company facilities and franchisees and the salespersons of the company facilities and franchisees have represented directly or by implication, that:

1. Inquiries are being solicited for the purpose of offering immediate training to qualified applicants who will be employed after the completion of said training.

2. Inquiries are being solicited for the purpose of offering

immediate employment to qualified applicants, who will be provided with on-the-job training.

3. Respondents have knowledge of specific jobs in which their graduates will be placed upon completion of training.

4. Respondents had a reasonable basis from which to conclude that:

(a) there was at the time such representations were made, or

(b) would be at the time that persons then enrolling graduated from respondents' courses

an urgent need or demand for all or most of respondents' graduates in positions for which respondents trained such persons.

5. A purchaser will complete respondents' courses within the specified course duration advertised for said courses.

6. The placement assistance furnished by respondents is free.

7. Placement assistance is furnished to all graduates of respondents' courses who seek placement;

8. Respondents furnish individualized training or instruction.

9. Respondents offer a vocational training program which is specially designed to qualify graduates for the employment requirements known to be existing in the local community.

10. Respondents make available to purchasers of their courses of instruction a finance plan whereby all tuition payments may be deferred until after completion of training,

11. Respondents' graduates who seek employment in the positions for which respondents have trained them do not find it necessary, in many instances, to seek said employment through sources other than respondents' placement office.

12. Graduates of respondents' courses are presently being hired by certain local business entities.

13. Graduates of respondents' courses are guaranteed a job through respondents' placement office.

14. A purchaser of respondents' courses will receive a full refund of his "reservation fee" if he decides to cancel before beginning classes.

15. Certain of respondents' training facilities have standing contractual agreements with local business entities whereby said entities agree to employ the graduates of said facilities.

16. Respondents will place students in part-time employment positions during the time that such students are enrolled in respondents' courses of instruction.

17. Respondents' courses are approved by the appropriate government agency for veterans' educational assistance benefits from the United States Government.

PAR. 6. In truth and in fact:

1. Inquiries are not solicited for the purpose of offering immediate

training to qualified applicants who will be employed after the completion of said training, but are solicited for the sole purpose of obtaining leads to prospective purchasers of respondents' courses of instruction.

2. Inquiries are not solicited for the purpose of offering immediate employment to qualified applicants, who will be provided with on-the-job training, but are solicited for the sole purpose of obtaining leads to prospective purchasers of respondents' courses of instruction.

3. Respondents do not have knowledge of specific jobs in which their graduates will be placed upon completion of training.

4. Respondents had no reasonable basis from which to conclude that:

(a) there was at the time such representations were made, or

(b) would be at the time that persons then enrolling graduated from respondents' courses, an urgent need or demand for all or most of respondents' graduates in positions for which respondents trained such persons;

5. In a substantial number of instances purchasers of respondents' courses do not complete said courses within the specified course duration advertised for said courses.

6. The placement assistance furnished by respondents is not free, but rather included in the tuition cost of respondents courses.

7. Placement assistance is not furnished to all of respondents' graduates who seek placement.

8. Respondents do not furnish individualized training or instruction, but rather furnish group classroom instruction.

9. Respondents do not offer a vocational training program which is specially designed to qualify graduates for the employment requirements known to be existing in the local community, but rather offer a standardized curriculum.

10. Respondents do not make available to purchasers of their courses of instruction a finance plan whereby all tuition payments may be deferred until after completion of training. The terms of respondents' finance plan require that tuition be paid in installments during the scheduled duration of the course, with the last installment due before the scheduled completion of the course.

11. Respondents' graduates who seek employment in the positions for which respondents have trained them do find it necessary, in many instances, to seek said employment through sources other than respondents' placement office.

12. In a substantial number of instances, the aforementioned certain local business entities were not hiring respondents' graduates

at the time that the representation was made that graduates were being hired.

13. Graduates of respondents' courses are not guaranteed a job through respondents' placement office.

14. In many instances a purchaser of respondents' courses does not receive a full refund of his "reservation fee" if he decides to cancel before beginning classes.

15. Respondents' training facilities do not have standing contractual agreements with local business entities whereby said entities agree to employ the graduates of said facilities.

16. In a substantial number of instances, respondents do not place students in part-time employment positions during the time that such students are enrolled in respondents' courses of instruction.

17. In a substantial number of instances, respondents' courses were not approved by the appropriate government agency for veterans' educational assistance benefits from the United States Government at the time that such approval was represented.

Therefore, the statements and representations set forth in Paragraphs Four and Five hereof were, and are false, misleading or deceptive acts or practices.

PAR. 7. In the further course and conduct of their business, as aforesaid, respondents have placed or caused to be placed advertisements seeking purchasers for their courses of instruction in the "Help Wanted" or "Employment" columns of daily newspapers' classified advertising sections, thereby inducing members of the general public to believe that respondents are offering paid employment and not merely training for which the purchaser must pay. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 8. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of their courses by the general public, respondents acting directly through their company owned training facilities and furnishing the means and instrumentalities to their franchisees, directly or indirectly have engaged in the following additional acts or practices:

(a) Respondents have induced members of the general public to sign certain contracts entitled "Application." Respondents thereby have deceptively and misleadingly created the impression that said documents are not legally binding contractual agreements, when in fact said documents are legally binding contractual agreements.

Therefore, respondents' statements, representations, acts or practices as set forth herein were, and are, false, misleading, unfair or deceptive acts or practices.

PAR. 9. Through the use of the aforesaid advertisements and otherwise, respondents have represented, directly or by implication, that there was at the time of the representation, or would be at the time of graduation from respondents' courses, an urgent need or demand for respondents' graduates in positions for which respondents train such persons. At the time of the said representations respondents had no reasonable basis adequate to support such representation. Therefore, the aforesaid acts and practices were, and are, unfair acts or practices.

PAR. 10. Respondents have created an organization named National Career Educational Accrediting Association of Washington, D.C. (NCEAA) and have held out and represented that their company training facilities and franchisees are accredited by said organization, when in fact said organization has no standing as an independent, nationally recognized accrediting association. Respondents have thereby deceived and misled and furnished the means and instrumentalities to others to deceive and mislead the general public into believing that respondents' said company training facilities and franchisees are accredited institutions, and have induced enrollments in said company facilities and franchisees by reliance thereon. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 11. Respondents offered for sale courses of instruction in computer programming which required that students enrolled therein complete a certain amount of operating time on computer equipment without disclosing in advertising or through their sales representatives that respondents' training facilities did not contain all of the equipment necessary to instruct said students, and that said students must pay for the cost of transportation themselves between respondents' facilities and the location of the necessary equipment. Knowledge of such facts would indicate the full cost and time requirements of enrolling in said courses. Thus, respondents have failed to disclose a material fact, which if known to certain consumers would be likely to affect their consideration of whether or not to purchase said courses of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 12. Respondents offered for sale courses of instruction intended to prepare graduates thereof for entry level employment as computer programmers, keypunch operators, cashier-checkers, PBX receptionists, secretaries, medical and paramedical personnel, nurses' aides and laboratory technicians without disclosing in advertising or through their sales representatives: (1) the percentage of recent graduates of each school for each course offered that were able to obtain

employment in the positions for which they were trained; (2) the employers that hired any such recent graduates for each course offered; (3) the initial salary any such recent graduate received for each course offered; and (4) the percentage of recent enrollees of each school for each course offered that have failed to complete their course of instruction. Knowledge of such facts would be an indication of the probability of graduating from respondents' courses and would indicate the possibility of securing future employment upon graduating and the nature of such employment. Thus, respondents have failed to disclose material facts, which if known to a consumer would be likely to affect his or her consideration of whether or not to purchase such courses of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 13. Respondents have entered into contracts with purchasers of their courses of instruction which contained provisions for the cancellation of said contracts and the refund of tuition monies paid by said purchasers. In many instances, respondents have failed to offer to refund and refused to refund to purchasers who have cancelled their contracts such monies as may be due and owing according to the terms of said contracts.

The use by respondents of the aforesaid practice and their continued retention of said sums, as aforesaid, is an unfair act or practice and an act of unfair competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 14. Respondents in many instances have terminated or caused to be terminated company branch facilities and franchise facilities without allowing students enrolled in said facilities at the time of termination to complete their course of training at no additional cost or change in terms, and have failed to offer to refund and refused to refund the tuition monies paid by said students to respondents.

The use by respondents of the aforesaid practice and their continued retention of said sums, as aforesaid, is an unfair act or practice and an act of unfair competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 15. By and through the use of statements set forth in Paragraph Four hereof, and others, including oral statements, similar thereto but not specifically set out herein, respondents have represented, directly or by implication, that purchasers of said franchises would receive:

(a) advice and assistance from respondent for successfully maintaining and operating their businesses.

(b) a substantial income from the operation of profitable businesses, such as \$10,000 to \$40,000 per year.

PAR. 16. In truth and in fact, in a substantial number of instances, purchasers of said franchises did not receive:

(a) advice or assistance from respondents for successfully maintaining and operating their businesses.

(b) a substantial income from the operation of profitable businesses, nor incomes between \$10,000 and \$40,000 per year.

PAR. 17. Respondents offered for sale said franchises without disclosing in advertising or through their sales representatives: (1) The business experience and background of the franchisor and various key personnel; (2) the recent profit and loss statements of representative franchises; (3) the number of franchises which operated at a loss during the previous year; (4) the percentage of recent graduates of representative franchises that were able to obtain employment in the positions for which they were trained; (5) the employers that hired any such recent graduates; (6) the initial salary any such recent graduates received; and (7) the percentage of recent enrollees at representative franchises that have failed to complete their courses of instruction. Knowledge of such facts would be an indication of the probability of successfully operating one of said franchises. Thus, respondents have failed to disclose material facts which, if known to a consumer, would be likely to affect his or her consideration of whether to purchase such franchise. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 18.

(a) Respondents as aforesaid, failed to disclose material facts while using other false, misleading, deceptive or unfair acts or practices, to induce persons to pay over to respondents substantial sums of money to purchase courses of instruction whose value to the said persons for future employment in the jobs for which training was offered was virtually worthless, and to pay over to respondents substantial sums of money to purchase said franchises whose value to said persons as an investment was virtually worthless. Respondents have received the said sums and have failed to offer to refund and refuse to refund such money to such purchasers of their courses and franchises.

The use by respondents of the aforesaid practices and their continued retention of the said sums, as aforesaid, is an unfair act or practice.

(b) In the alternative and separate from subparagraph (a) above, respondents, who were in substantial competition in commerce, with corporations, firms and individuals engaged in the sale of courses of vocational instruction, and the enfranchising of vocational instruction, did, as aforesaid, fail to disclose material facts while using false, misleading, deceptive or unfair acts or practices, to induce persons to

pay over to respondents substantial sums of money to purchase courses of instruction and franchises.

The effect of using the aforesaid acts and practices to secure substantial sums of money is or may be to substantially hinder, lessen, restrain, or prevent competition between the respondents and the aforesaid competitors.

PAR. 19. By and through the use of the aforesaid acts, practices, statements and representations, respondents placed in the hands of others the means and instrumentalities by and through which they misled and deceived the public in the manner and as to the things hereinabove alleged.

PAR. 20. In the course and conduct of their business, and at all times mentioned herein, respondents were in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses of instruction covering the same or similar subjects.

PAR. 21. The use by respondents of the aforesaid false, misleading, unfair or deceptive statements, representations, acts or practices, has had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and to induce a substantial number thereof to purchase respondents' courses and franchises by reason of said erroneous and mistaken belief.

PAR. 22. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having received notice of said determination and having reviewed a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint,

and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Fuqua Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3800 First National Bank Tower, in the city of Atlanta, State of Georgia.

Respondent Nationwide Acceptance Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3800 First National Bank Tower, in the city of Atlanta, State of Georgia.

Respondent Space/Time, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3800 First National Bank Tower, in the city of Atlanta, State of Georgia.

2. Respondent Fortune Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located 2951 34th Street South, in the city of St. Petersburg, State of Florida.

Respondent William L. Phillips is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondents Fortune Enterprises, Inc., a corporation, and its officers, and William L. Phillips, individually and as an officer or director of Fortune Enterprises, Inc., and those respondents' agents, representatives, employees, successors and assigns, directly or through any corporation, subsidiary, division, franchisee or other device, in connection with the creating, advertising,

promoting, offering for sale or distribution of courses of study, training or instruction or of any franchise for any product or service in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing orally, visually, or in writing, directly or by implication, that:

(a) Inquiries are solicited for the purpose of offering employment to qualified applicants; or that employment is being held out or made available in any respect.

(b) Graduates of any course of instruction offered by respondents are not required to actively seek employment opportunities through sources other than respondents' placement office; or misrepresenting in any manner, the requirements, duties, obligations or responsibilities imposed upon any person who seeks placement assistance; or misrepresenting in any manner the capabilities or functions of any placement office, referral service or any other type of assistance in obtaining employment for persons completing any said course.

(c) A purchaser will complete any course of instruction offered by respondents within a specified course duration; or misrepresenting orally, visually, or in writing, the length of time required to complete any course of instruction offered by respondents.

(d) The placement assistance furnished by respondents is free or without cost; or misrepresenting orally, visually, or in writing, the cost of any placement assistance or service.

(e) The placement assistance furnished by respondents' is made available to all graduates of respondents' courses of instruction, unless placement assistance of the same kind and quality is made available to each such graduate; or misrepresenting orally, visually, or in writing, the extent of any placement assistance or service furnished by respondents.

(f) Individualized training or instruction is furnished in any course of instruction offered by respondents; or misrepresenting orally, visually, or in writing the nature or quality of instruction offered by respondents.

(g) Respondents offer a tuition finance plan which allows purchasers of respondents' courses of instruction to "train now, pay later," or words of similar import and meaning, unless in each and every instance respondents offer, in the regular course and conduct of their business, a tuition finance plan which operates to defer all tuition payments until after the scheduled completion of training.

(h) (1) There is an urgent need or demand, or a need or demand of any size, proportion or magnitude, for graduates of any course of instruction offered by respondents.

(2) Or otherwise representing orally, visually, or in writing that opportunities for employment, or opportunities of any type or number are available to such persons,

except as hereinafter provided in Paragraph 9(b) of this order. *Provided, however,* That respondents shall cease and desist from making such representations unless the respondents in each and every instance:

(A) Until the passage of a base period to be determined pursuant to Paragraph 9(b) of this order, after the establishment of a new school location by respondents in any metropolitan area or county, whichever is larger, where respondents did not previously operate a school, and after the introduction by respondents of any new course of instruction at any school or location, shall:

(i) have in good faith conducted a statistically valid survey which establishes the validity of any such representation at all times when the representation is made, and

(ii) have disclosed in immediate and conspicuous conjunction with any such representation, that

All representations of potential employment demand or opportunities for graduates of this school (course) are merely estimates. This school (course) has not been in operation long enough to indicate what, if any, actual employment may result upon graduation.

(B) After the passage of a base period to be determined pursuant to Paragraph 9(b) of this order, and until two years after the establishment of a new school location by respondents in any metropolitan area or county, whichever is larger, where it did not previously operate a school, and after the introduction by respondents of any new course of instruction at any school or location, shall:

(i) make any such representations in the form and manner provided in Paragraph 9(b) of this order, and

(ii) disclose in immediate and conspicuous conjunction with any such representation, that:

This school (course) has not been in operation long enough to indicate what, if any, actual employment may result upon graduation.

2. Failing to keep adequate records which may be inspected by Commission staff members upon reasonable notice:

(a) Which disclose facts upon which any placement percentages or claims, or other representations of the type described in Paragraphs 1.(h) and 9(b) of this order are based; and

(b) From which the validity of any placement percentages or claims, or other representations of the type described in Paragraphs 1.(h) and 9(b) of this order can be determined.

3. Representing orally, visually, or in writing, directly or by implication, that:

(a) Graduates of respondents' course of instruction are hired by

certain local business entities, unless in each and every instance such companies are in fact hiring said graduates in substantial numbers at the time that the representation is made, and in the positions for which such persons have been trained by respondents.

(b) Graduates of respondents' courses are guaranteed a job through respondents' placement office.

(c) A purchaser of any course of instruction offered by respondents is entitled to receive and will receive a full refund of any monies paid as a "reservation fee" if said person cancels his enrollment prior to the commencement of classes; or representing that any refund method, right or privilege is available to purchasers of respondents' courses of instruction, unless said manner of refund is as represented in an integral provision of the written contract used by respondents to sell their courses of instruction.

(d) Any training facilities operated by respondents have standing contractual agreements with local business entities whereby said entities agree to employ the graduates of said facilities; or misrepresenting orally, visually, or in writing the relationship which exists between any of respondents' training facilities and local business entities.

(e) Respondents will place students in part-time employment positions during the time that such students are enrolled in respondents' courses of instruction; or misrepresenting orally, visually, or in writing that any form of employment, remuneration or tuition assistance is available to purchasers of any course of instruction offered by respondents during the time said purchasers are enrolled in respondents' courses of instruction.

(f) Any course of instruction offered by respondents is approved for veterans' education assistance benefits from the United States Government, unless in every instance, each such course is in fact so approved by the appropriate government agency; or misrepresenting orally, visually, or in writing the approval or other form of government action taken with respect to any course of instruction.

4. Failing to place the title "CONTRACT" in bold face type on any document which evidences an agreement between a person and respondents relating to the purchase of one of respondents' courses of instruction; and failing to remove from any such document the word "application," or words of similar import and meaning.

5. Failing to disclose, clearly and conspicuously, orally, visually, or in writing prior to the time that a prospective purchaser of respondents' courses of instruction signs an enrollment contract or contract of sale for any such course where all the necessary equipment to instruct said course is not contained on the premises of respondents' training

facilities, that any particular piece of equipment necessary for instruction is located elsewhere than on the premises of respondents' training facilities and that said purchasers must pay the cost of transportation between said facility and the point where the necessary equipment is located.

6. Failing to offer to refund and refund to purchasers of any course of instruction offered by respondents, in the event that any said course is discontinued by respondents prior to completion, or in the event that any said course is cancelled by respondents before classes begin, the full amount of all tuition monies paid by any said purchaser to respondents; *Provided, however*, That respondents may make available, to any said purchaser, who so selects, a transfer to the same course at a different, specified location where training shall be completed or commenced at no additional cost or change in contractual terms. It is understood and agreed that this paragraph shall become effective with respect to any course of instruction offered by respondents after the date this order is formally accepted by the Commission.

7. Representing orally, visually, or in writing, directly or by implication, that any of respondents' company training facilities or franchises have been or are accredited through the use of the name National Career Education Accrediting Association of Washington, D.C., or any abbreviation or seal of same, or any other similar name, or through the use of any name containing the word "Accrediting" or any other similar word, unless the said organization has been recognized by the United States Office of Education as an official accrediting association.

8. Placing any advertisement in any newspaper or magazine column entitled "Help Wanted," "Employment," "Preparing for Employment" or any other title of similar import or meaning, and failing to include in any advertisement, in a clear and conspicuous manner, the full name of any training facility which places or otherwise disseminates said advertisement.

9. Failing to send by certified mail, return receipt requested, to each person who shall contract with respondents for the purchase of any course of instruction, a written notice printed in at least ten (10) point type which shall disclose in substantially the same form as provided in Appendix A the following information and none other:

(a) The title "IMPORTANT INFORMATION" printed in bold face type across the top of the form;

(b) Paragraphs reciting the following information to be computed in the manner and form set forth below for the applicable base period as hereinafter defined in subparagraph (6);

(1) For each different course of instruction offered by respondents

for each school, location or facility at which respondents offer said courses of instruction;

The dates of the "base period" as computed in (b)(6);

The total number of students who graduated during such base period;

The numbers and percentages of total graduates who attained employment in the fields for which such graduates were trained. Such information must include an accurate description of each position in which such graduates attained employment.

(2) As to the same graduates used to compute the placement and employment statistics in (b)(1) above, a list of all employers which hired any such graduates during the base period, the number of such graduates hired by each firm or employer and the positions in which said graduates were hired.

(3) As to the same graduates used to compute the statistics in (b)(1) and (b)(2) above, the annual salary or income of said graduates. Such salary or income shall be classified by number of graduates attaining employment in each position described in (b)(1) at starting salaries expressed in consecutive categories of one thousand dollar amounts, in the form described in Appendix A.

(4) In compiling the foregoing information respondents shall not include any such graduates who respondents know have not retained such positions for more than one month from the initial date of employment. Respondents may use information supplied to them by graduates, employers, or other sources and shall not be required to obtain such information independently.

(5) For each course of instruction for which respondents are required to disclose information pursuant to subparagraphs (b)(1) through (b)(4), the total number of students who enrolled in said course and were scheduled to graduate during the base period and the number and percentage of the enrollees in said course who failed to complete the course of instruction. The term, "failure to complete," shall encompass those enrollees who:

(A) withdrew;

(B) failed the course (i.e., were academically terminated);

(C) did not complete the course within the base period in which they were scheduled to graduate and must take (a) make-up exam(s) in order to graduate;

(D) completed the course but did not receive a graduation certificate due to their failure to pay the balance of the tuition; or

(E) for any other reason, did not successfully complete the course within the base period in which they were scheduled to graduate.

(6) "Base Period" shall mean a six (6) month period beginning eight

(8) months before and ending two (2) months before the date on which respondents must begin to disseminate the necessary statistics with respect to the base period.

There shall be a one month period immediately following the close of a base period during which respondents shall gather the necessary statistics with respect to said base period. These statistics will relate to those graduates who successfully completed the particular course of instruction during the base period and who obtained employment during the base period or the one month period thereafter. Respondents may not include in the computation of the statistics for the base period any persons who graduate during the month after the base period and who find jobs during said one month period. Such persons will be included in statistics for the base period during which they graduate.

At the end of the first month period immediately following the close of a base period, respondents shall be allowed a second one-month period to calculate and prepare for distribution the necessary statistics with respect to said base period.

On the first day of each month, respondents shall begin to distribute statistics relating to the base period for the period beginning eight months before and ending two months before the first day of each month. Respondents shall continue to distribute said statistics until the first day of the next month and not thereafter.

For any six month period during which respondents have no graduates for a particular course of instruction, respondents may continue to distribute the statistics with respect to the prior base period for said course of instruction until such time as respondents have graduates of said course of instruction and have had one month in which to gather statistics with respect to those graduates and a second month during which to calculate and prepare for distribution the necessary statistics.

Appendix B contains a sample base period calculation.

Provided, however, That subparagraph (b)(1) through (b)(6) above shall be inapplicable to any newly established school that respondents may establish in any metropolitan area or county, whichever is larger, where they did not previously operate a school, or to any course newly introduced by respondents, until such time as the new school or course has been in operation for the base period defined in subparagraph (b)(6) above. The following statement shall be included in such notice during such period:

All representations of potential employment or salaries are merely estimates. This school (course) has not been in operation (offered) long enough to indicate what, if any, actual employment or salary may result upon graduation from this school (course).

After such time as the new school or course has been in operation for

the base period (subparagraph (b)(6) above), and until two years after the establishment of a new school location in any metropolitan area or county, whichever is larger, where they did not previously operate a school, or after the introduction of any new course by respondents, the following statement shall be included in such notice:

This school (course) has not been in operation (offered) long enough to indicate what, if any, actual employment or salary you may expect to achieve upon graduation from this school (course).

10. Contracting for any sale of any course of instruction in the form of a sales contract or other agreement which shall become binding prior to the purchaser affirming the enrollment contract by signing and returning to respondents the affirmation form specified in Paragraph 11, within ten (10) days of his receipt of that form. If the purchaser fails to affirm the enrollment contract within the ten (10) day period, respondents shall consider the contract null and void and within ten (10) business days of the expiration of the affirmation period shall refund all monies paid by the purchaser and cancel and return to the purchaser any evidence of indebtedness.

11. Failing to send by certified mail, return receipt requested, to each person who shall contract with respondents for the purchase of any course of instruction, a one page form, in duplicate that contains the following unsigned affirmation statement printed in bold face type of at least ten (10) points:

NOTICE TO THE PURCHASER

THE ENROLLMENT CONTRACT THAT YOU SIGNED WITH (NAME OF SCHOOL) ON (DATE) TO ENROLL IN (NAME OF COURSE) IS NOT EFFECTIVE OR VALID UNLESS YOU FIRST SIGN THIS STATEMENT AND RETURN IT TO THE ABOVE NAMED SCHOOL WITHIN TEN (10) DAYS FROM THE TIME THAT YOU RECEIVED THIS STATEMENT. YOU ARE FREE TO CANCEL YOUR ENROLLMENT AND RECEIVE A FULL REFUND OF ANY MONIES YOU HAVE PAID TO THE SCHOOL *BY NOT SIGNING OR MAILING* THIS STATEMENT WITHIN TEN (10) DAYS. AT THE EXPIRATION OF THIS TEN (10) DAY PERIOD THE SCHOOL HAS TEN (10) BUSINESS DAYS TO SEND YOU YOUR REFUND (IF ANY) AND TO CANCEL AND RETURN TO YOU ANY EVIDENCE OF INDEBTEDNESS THAT YOU SIGNED. HOWEVER, IF YOU DO WANT TO ENROLL IN THE ABOVE NAMED SCHOOL, YOU SHOULD SIGN YOUR NAME BELOW AND MAIL THIS STATEMENT TO THE SCHOOL WITHIN TEN (10) DAYS. KEEP THE DUPLICATE COPY FOR YOUR OWN RECORDS.

(Date)

(Signature)

The Affirmation Form shall not contain any information or representation other than the information specified in this paragraph, and the Form shall be mailed in the same envelope that is used to mail placement information as required by Paragraph 9. The Affirmation

Form and said placement information shall be sent by respondents no sooner than the next day after the person shall have contracted for the purchase of any course of instruction. During such period provided for in this paragraph, respondents shall not initiate contact with such person other than that required by this paragraph.

12. Making any representation of any kind whatsoever in connection with the creating, advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in any course offered to the public in any field in commerce, for which respondents have no reasonable basis prior to the making or dissemination thereof.

13. Using course names and descriptions which either directly or by implication indicate that respondents' courses are designed to prepare students for certain entry-level positions when in fact a substantial number of graduates of such courses do not achieve such entry-level positions.

14. Representing orally, visually, or in writing, directly or by implication, that purchasers of franchises will receive advice or assistance for maintaining or operating any business, or will receive a franchise that places its graduates in positions of employment; unless respondents have a reasonable basis for each such statement or representation and maintain and upon reasonable notice provide access to the Commission or its representatives for purposes of inspection or copying, for a period of three (3) years after each such statement or representation, full, complete and accurate records which will disclose:

(a) The time, frequency and duration of use or publication, and the content of each such statement or representation, and details as to the media or other means utilized in its dissemination or publication, and

(b) A factual, documented and verifiable basis for substantiation of each such statement or representation. *Provided further*, That with respect to any statement or representation as to placement or employment, such substantiation shall include a list of firms or employers which are currently hiring graduates of such courses in substantial numbers and in the positions for which such graduates have been trained, and the salary range of such graduates, computed in the manner provided in Paragraph 9 above.

15. Failing to furnish any prospective franchisee with the following information in a legible, written document, at the earlier of the time (1) when the first personal meeting for the purpose of discussing the possible sale of a franchise occurs between such prospective franchisee and the franchisor or its sales representative; or (2) at least fifteen (15) business days prior to the execution by the prospective franchisee of any franchise agreement or any other binding obligation, or the

payment by the prospective franchisee of any consideration in connection with the sale or proposed sale of a franchise:

(a) A distinctive and conspicuous cover sheet with the following notice in bold face type of not less than ten (10) point size, and containing no other promotional claims or other information not required by state law:

(1) INFORMATION FOR PROSPECTIVE FRANCHISEES REQUIRED BY FEDERAL TRADE COMMISSION

This information is provided for your own protection. It is in your best interest to study it carefully before making any commitment. The information contained herein has not been reviewed or approved by the Federal Trade Commission, but any misrepresentation may constitute a violation of Federal law.

(2) If you do sign a contract, you may cancel it and promptly obtain a full refund of any money paid, for any reason, within ten (10) business days after either signing such contract or receiving this disclosure statement, whichever occurs later.

(b) A detachable form which a franchisee may use as a notice of cancellation, which indicates the proper address of accomplishing any such cancellation.

(c) (1) The trade name(s) or trademark(s) under which the franchisor and the prospective franchisee will be doing business; (2) the official name(s) and address(es) and principal place(s) of business of the franchisor, the parent firm or holding company of franchisor, if any; and (3) all persons the franchisee is required or is suggested to do business with by the franchisor which have a substantial connection with the franchisor.

(d) The business experience stated individually of each of the franchisor's directors and chief executive officers including the biographical data concerning all such persons; except, however, that the information required by this subparagraph need not be disclosed where the franchisor is a listed company on a national stock exchange, although such fact shall be disclosed.

(e) The business experience of the franchisor, including the length of time the franchisor has conducted a business of the type to be operated by the franchisee; has granted franchises for such business; and has granted franchises in other lines of business.

(f) A certified balance sheet for the most recent year, a certified profit and loss statement for the most recent three (3) year period, and a statement of any material changes in the financial soundness of the franchisor since the date of such financial statements.

(g) Where such is the case, a statement that the franchisor or any of its current directors or chief executive officers:

(1) has been held liable in a civil action by final judgment, convicted of a felony or plead *nolo contendere* to a felony charge if such felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property for the most recent seven (7) year period.

(2) is subject to any currently effective State or federal agency injunctive or restrictive order relating to or affecting franchise activities or the franchisor/franchisee relationship.

(3) has filed in bankruptcy or has been associated as a director or chief executive officer of any company that has filed bankruptcy or reorganization proceedings for the most recent seven (7) year period.

(4) has been a party to any cause of action brought by franchisees against the franchisor for the most recent seven (7) year period which resulted either in an out of court settlement or a judgment against the franchisor.

(5) is presently a party to any cause of action brought by a franchisee against the franchisor.

Such statement shall set forth the identity and location of the court, date of conviction or judgment, and penalty imposed or damages assessed, and the date, nature, and issuer of each such order or ruling.

(h) A factual description of the franchise offered to be sold.

(i) (1) A statement of the total funds which must be paid by the franchisee to the franchisor or to a person having a substantial connection with the franchisor, in order to obtain or commence the franchise operation, such as deposits, downpayments and fees.

(2) If all or part of these fees or deposits are returnable under certain conditions, these conditions should be set forth; and if not returnable such fact so disclosed.

(j) A statement describing the recurring fees required to be paid, in connection with carrying on the franchise business, by the franchisee to the franchisor or to persons having a substantial connection with the franchisor, including but not limited to royalty, lease, advertising, training, and sign rental fees.

(k) A statement disclosing (1) the number of franchises and company-owned outlets operating at the end of the last calendar year, and (2) the names and addresses of the ten (10) franchises or company-owned outlets nearest the prospective franchisee's intended location, indicating which units are company-owned outlets.

(l) A statement of the number of franchises, if any, that operated at a loss during the previous year.

(m) A statement describing any real estate, services, supplies, products, signs, fixtures or equipment relating to the establishment or the operation of the franchise business which the franchisee is required

to purchase, lease or rent directly or indirectly from the franchisor or persons having substantial connection with the franchisor.

(n) A description of the basis and the amount of any revenue or other consideration to be received by the franchisor, or persons having a substantial connection with the franchisor, from suppliers to the prospective franchisee in consideration for goods or services required or suggested to be purchased by the franchisee.

(o) (1) A statement of the terms and conditions of any financing arrangement offered directly or indirectly by the franchisor or any person having a substantial connection with the franchisor, and

(2) A description of any payments received by the franchisor from any person for the placement of financing with such person.

(p) A statement whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services he may offer for sale, or limited in the customers to whom he may sell such goods or services.

(q) A statement of the extent to which the franchisor requires the franchisee to participate personally in the direct operation of the franchise.

(r) A statement disclosing:

(1) the conditions and terms under which the franchisor allows the franchisee to sell, lease, assign, or otherwise transfer his franchise, or any interest therein, and

(2) the amount of consideration which must be paid to the franchisor for such sale, lease, assignment or transfer, if any.

(s) A statement disclosing:

(1) the conditions under which the franchise agreement may be terminated by the franchisor, renewal may be refused, or the franchise may be repurchased by the franchisor at its option;

(2) the number, stated for each category, of franchises which were terminated, renewal refused or repurchased during the preceding calendar year and a complete explanation thereof; and

(3) the conditions under which the franchise agreement may be terminated by the franchisee and the number of franchises voluntarily terminated by franchisees during the preceding calendar year.

(t) If site selection is involved, a statement disclosing the range of time that has elapsed in the preceding calendar year, between signing of a franchise agreement and site selection. If, in addition, operating units are to be provided, a statement disclosing the range of time that has elapsed in the preceding calendar year between the signing of the franchise agreement and opening of the franchise outlet.

(u) If the franchisor offers a training program or informs the prospective franchisee that it intends to provide him with training; the

franchisor must specify the specific type and nature of the training, the number of hours or days of instruction, and the cost to the franchisee, if any.

(v) If a franchisor uses the name of a "public figure" in connection with the recommendation of the franchise or as a part of the name of the franchise operation, a statement disclosing: (1) the nature and extent of the public figure's involvement and obligations to the franchisor, including but not limited to the promotional assistance the public figure will provide to the franchisor and to the franchisee; (2) the total investment of the public figure in the franchise operation; and (3) the amount of any fees the franchisee will be obligated to pay for such involvement and assistance provided by the public figure.

(w) A statement explaining clearly the terms and conditions of any covenant not to compete which a franchisee may be required to enter into.

16. *It is further ordered*, That in addition to the information required by Paragraph 15 above, respondents Fortune Enterprises, Inc. and William L. Phillips, in connection with the creating, advertising, promoting, offering for sale or distribution of franchises for courses of study, training, or instruction, shall disclose to any such prospective franchisee in the same manner and form as prescribed in Paragraph 15 above:

(a) The placement percentage for graduates as computed in the following manner: Separately for each course of instruction offered by each of the said franchises at which franchisees conduct business or offer any course of instruction, and during the six month period immediately preceding such computation, the total number of graduates during said period divided into the total number of such graduates who during said period, within the actual knowledge of such school, location or facility, attained employment in the entry-level positions for which said graduates were trained.

(b) The percentage of enrollees, during the past six months, separately for each course of instruction offered by each of the said franchises, who have failed to complete their courses of instructions.

(c) A list of firms or employers which are currently hiring graduates of respondents' courses in substantial numbers and in the positions for which such graduates have been trained, as to the same graduates used to compute the placement percentage in (a) above.

(d) The salary range achieved by the same graduates used to compute the placement percentage in (a) above, based upon a statistically valid survey conducted in good faith at each location or facility where franchises offer training.

17. *It is further ordered*, That respondents Fortune Enterprises, Inc. and William L. Phillips shall not:

(a) Make any oral or written representation of a prospective franchisee's potential sales, income, gross or net profit unless:

(1) such sales, income or profits are reasonably likely to be achieved by the person to whom the representation is made;

(2) the basis and assumptions for such representation are set forth in detail;

(3) such representation and the underlying data have been prepared in accordance with generally accepted accounting principles;

(4) in immediate conjunction therewith, the following statement is clearly and conspicuously disclosed:

THERE IS NO ASSURANCE THAT INCOME AND PROFIT PROJECTIONS WILL BE ATTAINED BY ANY SPECIFIC FRANCHISEE. THEY ARE MERELY ESTIMATES; and

(5) the amounts represented are not in excess of sales, income or profits actually achieved by existing franchises. If franchises have not been in operation long enough to indicate what sales, income or profits may result, then representations of such to a prospective franchisee are prohibited.

(b) Make any claim with respect to past or potential sales, profits, or earnings in any advertising, promotional material, or disclosure statement, or in any oral sales presentation, or discussion between a franchisor's representatives and prospective franchisees, for which the franchisor does not have substantiation in its possession, which substantiation shall be made available to prospective franchisees or the Commission or its staff upon demand.

(c) Make any claim or representation in advertising or promotional material, or in any oral sales presentation, solicitation or discussion between a franchisor's representatives and prospective franchisees, which is inconsistent with the information required to be disclosed by this order.

(d) Fail to furnish the prospective franchisee with a copy of the completed franchise agreement which shall not become binding prior to the end of the tenth (10th) day after the date of receipt by the customer of the form of notice provided for in Paragraph 15 of this order.

(e) Fail to orally explain to the prospective franchisee, before an agreement is consummated, the cancellation procedure provided in this order, namely that any contract or other agreement may be cancelled for any reason within ten (10) business days after the contract becomes legally binding on both parties or after the franchisee receives this disclosure statement, whichever occurs later.

(f) Fail to return the funds or deposits in accordance with subparagraph 15(i) of this order.

18. For the purpose of this order, the term "in connection with the creating, advertising, promoting, offering for sale or distribution" of any franchise for any product or service shall not include a relationship between respondents and any natural person, partnership, corporation, group, association, or any other business entity involving the mere investment of money.

19. For the purpose of this order, the term "franchise" shall incorporate by reference the first alternative definition of "franchise" contained in the Federal Trade Commission's revised Proposed Trade Regulation Rule on Disclosure Requirements And Prohibitions Concerning Franchising published at 39 F. R. 30362.

20. *It is further ordered*, That in the event the Federal Trade Commission promulgates a final Trade Regulation Rule on Disclosure Requirements And Prohibitions Concerning Franchising, then such Trade Regulation Rule shall completely supersede and replace all franchise provisions contained in this order, except Paragraphs 14, 16, 18 and subparagraphs 15(a)(2), 15(b), 15(1), 17(d) and 17(e), and such trade regulation rule shall become a part of this order.

II

1. *It is further ordered*, That Fortune Enterprises, Inc. and William L. Phillips:

(a) Deliver a copy of this order by hand or by certified mail to each of their present and future franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors or to any other person or entity which promotes, offers for sale, sells or distributes any course of instruction offered by respondents; provided however, with respect to any other franchise for any other product or service, respondents shall deliver to such persons described above a copy of those paragraphs in Part I of this order applicable to franchising such other products or services and Part II;

(b) Provide each person or entity described in subparagraph (a) above with a form returnable to the respondents clearly stating his (its) intention to be bound by and to conform his (its) business practices to the requirements of this order; retain said statement during the period said person or entity is so engaged; and make said statement available to the Commission's staff for inspection and copying upon request;

(c) Inform each person or entity described in subparagraph (a) above that the respondents will not use or engage or will terminate the use or engagement of any such person or entity, unless such person or entity agrees to and does file notice with the respondents that he (it) will be bound by the provisions contained in this order;

(d) Shall not, if such person or entity as described in subparagraph (a)

above will not agree to so file the notice set forth in subparagraph (b) above with the respondents and be bound by the provisions of the order, use or engage or continue the use or engagement of such person or entity to promote, offer for sale, sell or distribute any course of instruction or franchise included in this order;

(e) Inform each person or entity described in subparagraph (a) above that the respondents are obligated by this order to discontinue dealing with or to terminate the use or engagement of persons or entities who continue on their own the deceptive acts or practices prohibited by this order;

(f) Institute a program of continuing surveillance adequate to reveal whether the business practices of each said person or entity described in subparagraph (a) above conform to the requirements of this order;

(g) Discontinue dealing with or terminate the use or engagement of any person or entity described in subparagraph (a) above, as revealed by the aforesaid program of surveillance, who continues on his (its) own any act or practice prohibited by this order.

2. *It is further ordered*, That respondents Fortune Enterprises, Inc. and William L. Phillips shall forthwith distribute a copy of this order to each of their operating divisions which promotes, offers for sale, sells or distributes any course of instruction or franchise offered by respondents.

3. *It is further ordered*, That respondents Fortune Enterprises, Inc. and William L. Phillips shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other change in respondents which may affect compliance obligations arising out of this order.

4. *It is further ordered*, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

III

1. *It is further ordered*, That respondents Fuqua Industries, Inc. ("Fuqua") and William L. Phillips ("Phillips") shall each within sixty (60) days from the effective date of this order, compile a list from Career Enterprises, Inc. ("Career") records in their respective possession, custody or control, or any other records in their respective possession, custody, or control, of the last known names and addresses of all persons who purchased a Career course of instruction in a

company-owned or franchise school of Career and who first paid monies to Career from Jan. 1, 1969 to July 17, 1972, including the names and addresses of the purchasers' nearest relative(s) or others whose addresses appear on any document relating to said purchaser, supplemented by a list of the same category of persons identified by the Commission and transmitted to said respondents within one hundred five (105) days after the effective date of this order.

2. *It is further ordered*, That respondents Fuqua and Phillips shall jointly, within sixty (60) days from the effective date of this order, employ an independent contractor acceptable to the Commission, and give to the independent contractor, within one hundred ten (110) days from the effective date of this order, the lists of names and addresses of persons referred to in Paragraph 1 above. Said independent contractor shall review the lists, strike out any duplication of names and addresses of persons who purchased a Career course of instruction, and shall prepare a final list of all persons to receive Appendices C and D. Said independent contractor shall make an inquiry in writing on the one hundred fiftieth (150th) day after the effective date of this order, to all persons whose names and addresses appear on the final list, in the language, manner and form shown in Appendices C and D, by first class mail and with a self-addressed postage prepaid envelope. With respect to all persons whose first mailed inquiry is returned unopened said independent contractor shall have a duty, commencing within three (3) business days after such mailed inquiry is returned unopened, to attempt to establish contact with persons referred to above by requesting by mail new addresses from the students' nearest relative(s) or others whose addresses appear on any document supplied to the independent contractor through which a student may be located.

3. *It is further ordered*, That (a) at the expiration of ninety (90) days after the independent contractor first mails Appendices C and D to persons on the final list referred to in Paragraph 2 above, the independent contractor shall transmit the Appendix D responses it has received by such date to respondents Fuqua and Phillips, and (b) respondents' obligation to make restitution shall extend only to such persons (i) whose names appear on the final list referred to in Paragraph 2 above and (ii) whose Appendix D responses have been received by the independent contractor at or before the expiration of said ninety (90) day period.

4. *It is further ordered*, That, within one hundred fifty (150) days after the independent contractor first mails Appendices C and D to persons on the final list referred to in Paragraph 2 above, respondents Fuqua and Phillips shall refund to purchasers of Career courses of instruction whose names appear on the Appendix D responses

transmitted by the independent contractor pursuant to Paragraph 3 above, less any prior refunds, seventy-five percent (75%) per person, of the total amount of monies paid by such persons to Career, or paid or owed by such persons to any third party financial institution or individual by virtue of the third party's purchase of a contractual debt owed by such persons to Career with respect to such enrollment or instruction; *Provided, however*, That this order provision shall not apply to any such person who paid less than one hundred dollars and one cent (\$100.01) with respect to enrollment or instruction in a Career course, or who attained an employment position as a result of or substantially related to the training received in the course of instruction purchased from or arranged by Career, or who, for reasons unrelated to the training or job demand, elected not to seek such employment, or who made a deposit but did not show up for classes, or who enrolled in a class and dropped out for reasons unrelated to the course of instruction or job demand; and provided further that respondents' obligation to make refunds of any nature whatsoever under this order provision and as contemplated by the complaint herein shall expire in all respects at the end of two hundred ten (210) days after the date on which the independent contractor first mails inquiries to purchasers of Career courses of instruction. It is understood and agreed and adopted as part of this order that respondents' liability for restitution shall not exceed one million two hundred fifty thousand dollars (\$1,250,000); and in the event that this sum is not adequate to provide a refund of seventy-five percent (75 %) of the total monies paid by persons eligible to receive a refund as set forth in this paragraph, then a proportionate percentage of the 75 percent refund due shall be paid to those persons eligible until the \$1,250,000 has been exhausted. Respondents Fuqua and Phillips shall bear equally the expense of making the restitution payments referred to in this paragraph, provided that in the event the total amount of restitution payments exceeds one million dollars (\$1,000,000), Fuqua shall bear the expense of making restitution payments in excess of one million dollars (\$1,000,000), up to one million two hundred fifty thousand dollars (\$1,250,000). In no event shall the total amount of Fuqua's liability to make restitution exceed one-half of restitution payments up to and including one million dollars (\$1,000,000), or, in the event the restitution payments required by this order exceed one million dollars (\$1,000,000), said one-half share, plus the amount of any required restitution payments over one million dollars (\$1,000,000), up to one million two hundred fifty thousand dollars (\$1,250,000), for a total maximum Fuqua liability of seven hundred fifty thousand dollars (\$750,000). In no event shall the total amount of Phillips' liability to make restitution payments exceed five hundred thousand dollars

(\$500,000) or one-half of the restitution payments up to one million dollars (\$1,000,000), whichever is less. It is further ordered that respondents Fuqua and Phillips' liability for restitution arising out of any of the acts or practices of Career does not and shall not extend to any other period of time or class of claimant other than as provided in this order.

5. *It is further ordered*, That if an independent contractor acceptable to the Commission is not employed by respondents Fuqua and Phillips within sixty (60) days from the effective date of this order,

then: (i) said independent contractor shall have ninety (90) days from the time of his employment to prepare the final list and to make the inquiry in writing referred to in Paragraph 2 above, and (ii) said respondents' liability to make refunds shall not expire until two hundred ten (210) days after the date on which the independent contractor first mails inquiries to purchasers of Career courses of instruction.

6. *It is further ordered*, That respondents Fuqua and Phillips shall maintain adequate records for two (2) years after the effective date of this order, same to be furnished upon request by the Federal Trade Commission, which disclose the dates and manner in which persons were contacted and responded pursuant to the above procedures including all documents received from such persons.

7. *It is further ordered*, That the respondents Fuqua Industries, Inc., Fortune Enterprises, Inc., and William L. Phillips shall notify the Commission at least thirty (30) days prior to any proposed change in the respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other change in respondents which may affect compliance obligations arising out of this order.

8. *It is further ordered*, That each respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth the manner and form in which each has complied with this order, and shall, within two hundred seventy (270) days after the independent contractor first mails the inquiries referred to in Paragraph 2 above, file with the Commission a report in writing setting forth the manner and form in which each has complied with Part III of this Order.

APPENDIX A

IMPORTANT INFORMATION

Regarding Students of Career Training Institute of New York, New York

Course: Key punch Operator

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Base Period: Jan. 1, 1974 through June 30, 1974

Information Regarding Post-Graduate Employment of Graduates:

	<i>Number</i>	<i>Percent*</i>
Total graduates	80	100%
Total graduates obtaining employment as keypunch operators	16	20%

*Employers Hiring Persons Who Graduated From Career Training Institute
of New York, New York From Jan. 1, 1974 Through June 30, 1974:*

<i>As Keypunch Operators</i>	<i>Total Hired</i>
ABC Company	4
D _____ Company	4
H _____ & Sons	4
L _____ Company	4

*Salary Information Regarding Persons Who Graduated From Career Training
Institute of New York, New York From Jan. 1, 1974 Through June 30, 1974:*

As Keypunch Operators:

4 Graduate(s) began at a salary between \$5,000 and 5,999

6 Graduate(s) began at a salary between \$6,000 and 6,999

6 Graduate(s) began at a salary between \$7,000 and 7,999

*Information Regarding Total Number and Percentage Who Failed to Complete This
Course:*Total number of students enrolled in this course and scheduled to graduate from Jan.
1, 1974 through June 30, 1974: 240

Total number who failed to complete this course: 160

* Total percentage who failed to complete this course: 66%

APPENDIX B

Base Period 1 begins Jan. 1, 1974 and ends June 30, 1974

During July, respondents shall gather the statistics with respect to Base Period 1. These statistics shall include the required information regarding jobs obtained by the Jan.-June graduates from Jan. 1 through July 31. These statistics may not include any persons who graduate during July and who obtain employment before July 31. Those persons will be included in the statistics for Base Period 2. During August respondents shall calculate and prepare the Base Period 1 statistics for distribution.

On Sept. 1, respondents shall begin to disseminate statistics with respect to graduates for the period Jan. 1 through June 30, and respondents shall continue to use those statistics through Sept. 30.

During August, respondents shall gather the statistics with respect to Base Period 2, which begins Feb. 1, 1974, and ends July 31, 1974. These statistics shall include the required information regarding jobs obtained by the Feb.-July graduates from February through August 31. During Sept., respondents shall calculate and prepare for distribution the necessary statistics.

* The examples in this Appendix are for illustration and are not based on actual statistics.

Beginning Oct. 1, respondents shall disseminate the necessary statistics for Base Period 2 and shall be prohibited from disseminating previous base period statistics.

APPENDIX C

IMPORTANT NOTICE

TO: (Name of Addressee)

SUBJECT: Your attendance at (Name of School and City), a Career Enterprises, Inc. school

By an order of the United States Federal Trade Commission entered on (date of order), we have been directed to determine from you certain facts concerning your relationship with the above Career school. The Commission has determined that the collection of this information is required under the Federal Trade Commission Act to properly implement a Commission order that requires the undersigned individual and Fuqua Industries, Inc. to meet certain obligations with respect to former enrollees of this school. It is important, therefore, that you provide us with your response to the enclosed questionnaire as soon as possible so that we may comply with the Commission's order.

Please mark or fill-in the appropriate spaces on the enclosed statement and return it by the self-addressed, stamped envelope within seven (7) days to:

[Independent Contractor]

[Name and Address]

[Telephone No.]

If you have any questions regarding this letter, please contact the above company. Your cooperation in this matter will be appreciated.

William L. Phillips

Former Chairman of the Board
of Career Enterprises, Inc.

APPENDIX D

SUBJECT: Your attendance at (Name of School and City), a Career Enterprises, Inc. school

1. Is your present address correctly shown on the envelope? Yes () No () If no, what is your address?

2. On what date did you enroll in the above Career school?

Month

Year

3. What is the total amount of money you paid for your course of the above Career school? In computing this amount, include both the amount you paid directly to the Career school, and the amount, if any, paid for such course to Career by any financial institution or individual who informed you that your debt obligation has been transferred from the Career school to such financial institution or individual and that, therefore, in the future you would not make payments on your tuition to the Career school, but would make such payments to the financial institution or individual who informed you of this new arrangement. (Total amount \$ _____).

4. What is the name and address of this financial institution or individual?

5. What is the name of the course you signed up for?

6. Did you attend any classes? Yes () No ()

7. Did you complete the course? Yes () No ()

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8. If the answer to question number 7 is no, set forth reason.
9. Did you receive any refund of any tuition money paid to the above Career school?
Yes () No ()
(If the answer to question number 9 is yes, please answer question number 10).
10. What is the total amount of such refunds received by you?

(Total amount \$ _____).

11. Did you ever attain any employment positions as a result of, or substantially relating to, the training you received from the Career school? Yes () No ()

12. If no, why not?

13. Please attach to this form any documents or copies of such documents that indicate you paid an amount of money for any course of instruction offered by the Career school.

This form should be signed and mailed, in the enclosed self-addressed postage paid envelope.

I HEREBY CERTIFY THAT THE ABOVE ANSWERS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

(Date)

(Social Security No.)

(Signature)

(Print Name Here)

(Home Address)

(Home Telephone No.)

(Employer)