

Complaint

86 F.T.C.

IN THE MATTER OF

DIESEL TRUCK DRIVERS TRAINING SCHOOL, INC., ET
AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2759. Complaint, Nov. 3, 1975—Decision, Nov. 3, 1975*

Consent order requiring a Sun Prairie, Wis., seller and distributor of courses of instruction in truck driving, among other things to cease misrepresenting business affiliations, earnings, nature of business and opportunities in their services. Respondents are further required to make certain affirmative disclosures to prospective students and to give students a three-day cooling-off period during which they may cancel their contract with full refund of all monies paid.

Appearances

For the Commission: *William M. Rice, Jr.*

For the respondents: *Robert L. Klabacka, Klabacka & Kirkhuff*, Sun Prairie, Wis.

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 Diesel Truck Drivers Training School, Inc., a corporation, and Robert L. Klabacka, individually and as an officer of said corporation, 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 Diesel Truck Drivers Training School, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at rural route #1, Sun Prairie, Wis.

Respondent Robert L. Klabacka is an individual and officer of respondent corporation. His business address is the same as that of said corporate respondent.

The said individual respondent formulates, directs and controls that acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and have been for some time last past, engaged in the advertising, offering for sale, sale or distribution of

courses of study and instruction purporting to prepare graduates thereof for employment as truck drivers and related occupations. Said courses when pursued to completion include a three-week period of in-residence training at a training facility located at Sun Prairie, Wis.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the publication of advertisements concerning the said courses in newspapers of general circulation and have utilized the services of salesmen and franchisees who induce prospective purchasers of said courses, located in States other than the State of Wisconsin, to contact said salesmen and franchisees at respondents' and franchisees' offices. Said salesmen and franchisees transmit to and receive from respondents contracts, checks and other instruments of a commercial nature relating to the sale of said courses to said purchasers. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have published or caused to be published in the "Help-Wanted" and other columns of newspapers advertisements containing statements regarding job opportunities, training and wages for persons interested in becoming truck drivers. Typical and illustrative, but not all inclusive, of such advertisements are the following:

ACTIVE MEN

The Growing Truck Industry Needs Trained
Semi-drivers. These Men Earn up to \$350
Per Week.

Train Now - Pay Later
. 3 Weeks Training
. Free Job Placement
Over 300 Firms have hired our graduates

DIESEL DRIVING SCHOOL
400 Brooks Lane, Hazelwood, Mo.

DIESEL SEMI-DRIVERS

75 Men Wanted

Men * * * 21 to 44 years who want to train to become professional (over the road) diesel semi-truck drivers, we will train you in just three weeks at our training grounds at Sun Prairie, Wis. You too can earn that "Big Pay Check" that professional drivers earn. Free placement service. Tuition can be financed. School is approved for veterans. For information, phone or mail this ad to:

DIESEL TRUCK DRIVER TRAINING 3701 East State St., Room 103, Rockford, Ill.
61108 - Phone 397-0430

PAR. 5. By and through the use of the statements contained in the advertisements set forth in Paragraph Four, and others of similar import and meaning but not expressly set out herein, respondents represent, directly or by implication, that:

1. The corporate respondent operates, or is affiliated with, or represents a trucking company.
2. Respondents are offering employment to qualified applicants who will be trained as truck drivers.
3. Persons receiving training from respondents will earn \$350 per week as truck drivers or in related occupations upon completion of training.
4. There is a reasonable basis from which to conclude that there is now or will be a need or demand for truck drivers which respondents' training is designed to meet.

PAR. 6. In truth and in fact:

1. The corporate respondent does not operate or represent and is not affiliated with any trucking company but, to the contrary, is engaged in the sale of courses of instruction to prospective purchasers.
2. Respondents do not offer employment to persons who have been trained as truck drivers but attempt to and do sell courses of instruction to said purchasers.
3. Few persons who received training from respondents pursuant to said offer have earned amounts such as \$350 per week as truck drivers or in related occupations as a result of such training.
4. Respondents had no reasonable basis from which to conclude that there is now or will be a need or demand for truck drivers which respondents' training is designed to meet.

Therefore, the statements and representations as set forth in Paragraphs Four and Five were, and are, false, misleading and deceptive.

PAR. 7. In the further course and conduct of their business as aforesaid, respondents cause persons who respond to the aforesaid or similar advertisements to contact respondents' salesmen and franchisees. For the purpose of inducing the sale of said courses, such salesmen and franchisees, make to prospective purchasers many statements and representations, directly or by implication, regarding opportunities for employment as truck drivers available to purchasers of said courses, the assistance furnished to graduates of courses offered by respondents in obtaining employment and other matters. Some of the aforesaid statements and representations appear in brochures, pamphlets and other printed material furnished to said salesmen and franchisees by respondents and in other statements and representations made orally by said salesmen and franchisees. Among and typical,

but not all inclusive, of such statements and representations are the following:

1. Respondents have been requested by trucking companies to train drivers for jobs as truck drivers with their companies upon completion of said training.

2. Respondents provide a placement service which will secure jobs as truck drivers for graduates of said courses and who want to work in such capacities.

3. Graduates of said courses who want to work are assured jobs as truck drivers as a consequence of graduating from said courses.

4. Respondents have a free placement service and free job assistance for their graduates.

PAR. 8. In truth and in fact:

1. Respondents have not been requested by trucking companies to train people for jobs as truck drivers, which jobs shall be offered by such companies to graduates of said training.

2. The placement service provided by respondents will not secure a job as a truck driver for graduates of said courses who want to work in such capacity.

3. Graduates of said courses who want to work are not assured jobs as truck drivers as a consequence of graduating from said courses.

4. Such placement assistance as is furnished by respondents is not free, but rather is included in the tuition cost of courses offered by respondents.

Therefore, the statements and representations as set forth in Paragraph Seven hereof were, and are, false, misleading and deceptive.

PAR. 9. Respondents offered for sale courses of instruction to prepare graduates thereof for jobs as truck drivers without disclosing in advertising or through their sales representatives or franchisees: (1) the recent percentage of graduates of each school that were able to obtain the employment for which they were trained; (2) the employers that hired any such graduates; (3) the initial salary any such graduates received; 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 indicate the possibility of securing future employment upon graduation and the nature of such employment. Thus, respondents have failed to disclose a material fact, which, if known to certain prospective enrollees, would be likely to affect their 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.

PAR. 10. Respondents have entered into contracts with purchasers of said courses of instruction which contain 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. 11. (a) Respondents have been using the aforesaid unfair, false, misleading or deceptive acts and practices, which a reasonably prudent person should have known, under all of the facts and circumstances, were unfair, false, misleading or deceptive, to induce persons to pay or to contract to pay over to them substantial sums of money to purchasers in connection with their future employment and careers was of little value compared to the sums of money paid by said purchasers. Respondents have received the said sums and have failed to offer refunds and have failed to refund such sums to rescind such contractual obligations of substantial numbers of enrollees and participants in such courses who were unable to secure employment in the positions and fields for which they have been purportedly trained by respondents.

The use by respondents of the aforesaid acts and practices, their continued retention of said sums and their continued failure to rescind such contractual obligations of their customers, as aforesaid, are unfair acts or practices.

(b) In the alternative and separate from Paragraph Eleven (a) herein, respondents, who are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses of vocational instruction, have been and are now using, as aforesaid, 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.

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 respondents and the aforesaid competitors.

Therefore, the said acts and practices constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act.

PAR. 12. By and through the use of the aforesaid acts, practices, statements and representations, respondents place in the hands of others the means and instrumentalities by and through which they

mislead and deceive the public in the manner and as to the things hereinbefore alleged.

PAR. 13. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce, with corporations, firms and individuals engaged in the sale and distribution of similar courses of study and instruction.

PAR. 14. The use of respondents to the false, misleading and deceptive statements, representations, acts and practices and their failure to disclose material facts, as aforesaid, has had, and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and to induce a substantial number thereof to purchase said courses of study and instruction offered by respondents by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices in or affecting 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 been served with notice of said determination and with 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 Diesel Truck Drivers Training School, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at rural route #1, in the City of Sun Prairie, State of Wisconsin.

Respondent Robert L. Klabacka 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.

2. 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

It is ordered, That respondents Diesel Truck Drivers Training School, Inc., a corporation, its successors and assigns, and officers and Robert L. Klabacka, individually and as an officer of said corporation, and respondents' officers, agents, franchisees, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of courses of study and instruction in truck driving or in any other subject, trade or vocation, or any other product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I

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

A. They are, or represent, or are affiliated with, trucking companies or any industry for which enrollees of any courses offered by respondents are being trained; or misrepresenting, in any manner, the nature of their business.

B. Persons receiving training will, or may, earn any specified amounts, or misrepresenting in any manner the prospective earnings of such persons.

C. They have been requested by trucking companies or any other business or organization to train persons for specific jobs, or misrepresenting, in any manner, respondents' connection or affiliation with any industry or any member thereof.

D. Graduates of any courses will be qualified thereby for employ-

ment at jobs for which said graduates were purportedly trained, when additional training or experience is required.

E. There is a substantial demand, or a demand of any size or proportion, for persons completing any of the courses offered by the respondents in the field of truck driving or any other field, or otherwise representing, orally 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 4 of this order. *Provided, however,* That respondents shall cease and desist making such representations unless the respondents in each and every instance:

(1) Until the passage of a base period to be determined pursuant to Paragraph 4(b) of Part I of this order, after the establishment of a new school location by respondents in any metropolitan area or county, whichever is larger, where they did not previously operate a school, and after the introduction by respondents of any new course of instruction at any school or location, shall:

(A) 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

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

All representations for 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.

(2) After the passage of a base period to be determined pursuant to Paragraph 4(b) of Part I 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 they did not previously operate a school, and after the introduction by respondents of any new course of instruction at any school or location, shall:

(A) make any such representations in the form and manner provided in Paragraph 4(b) of Part I of this order, and

(B) 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. Placing ads in "Help-Wanted" columns or representing by any means that employment is being offered when such offer is not a bona fide offer of employment.

3. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any course offered by respondents, the full cost of such course including the fee for any home study lessons and for any residential training.

4. Failing to deliver to each person who shall contract for the

purchase of any course of training or instruction, at the time such person so contracts, a notice, in a form approved by the Commission, which shall disclose the following information and none other:

(a) The title "IMPORTANT INFORMATION" printed in boldface type across the top of the form.

(b) A paragraph reciting the following affirmative disclosures which shall be based upon information compiled not more than one year prior to the delivery of such notice:

(1) The placement data for graduates determined in the following manner:

Respondents shall, following the graduation of each student graduating during each six-month period, commencing with the six-month period ending on the last day of the month in which this order is finally accepted by the Commission, undertake to determine the following information with respect to each such graduate: (a) his employment status; (b) the name of his employer and position, if any; and (c) his salary. The disclosure shall indicate the total number of graduates of the course; the number of those who have indicated to respondents a desire for employment; the number of those desiring employment known by respondents to be employed; the number of those desiring employment known to be unemployed; and the number of those desiring employment whose employment status is not known.

Separate placement data shall be calculated for each course of instruction offered in each school location or facility during such six-month period.

(2) a list of types of employers as indicated in responses to questionnaires sent pursuant to subparagraph (1) above or otherwise within the actual knowledge of respondents which have hired the graduates referred to in subparagraph (1) above in the positions for which such graduates were trained, and the percentage of employed graduates working for each type of employer.

(3) the salary range of the graduates referred to in subparagraph (1) above. The "salary range" shall be the highest and lowest salary for full time employment indicated in responses to questionnaires sent pursuant to subparagraph (1) above or otherwise within the actual knowledge of respondents with respect to such graduates.

Provided, however, That this subparagraph (b) shall be inapplicable until the first day of the seventh month following the month in which this order is finally accepted by the Commission.

(c) An explanation of the cancellation procedure provided in this order, namely that any contract or other agreement may be cancelled

for any reason until midnight of the third business day after receipt by the customer, via the U.S. mails, of this notice.

(d) A detachable form which the person may use as notice of cancellation, which indicates the proper address for accomplishing any such cancellation.

This notice shall be sent by respondents no sooner than the next day after the person shall have contracted for the sale of any course of instruction; respondents, during such period provided for in subparagraph (c) above, shall not initiate contact with such person other than that required by this paragraph.

Provided, however, That subparagraph (b) 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 to be established pursuant to subparagraph (b) 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 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 to be established pursuant to subparagraph (b) 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 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 long enough to indicate what, if any, actual employment or salary may result upon graduation from this school (course).

5. 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 midnight of the third business day after the date of receipt by the customer of the form of notice provided for in paragraph 4 above. Upon cancellation of any said sales contract or other agreement as provided in paragraph 4(c) above, respondents are obligated to refund within thirty business days to any person exercising the cancellation right, all monies paid or remitted up until the notice of cancellation.

6. Failing to disclose, clearly and conspicuously, in advertisements, in catalogs, brochures and on letterheads that respondents' business is solely and exclusively that of a private school, not affiliated with any members of the trucking industry or of any member of any other industry.

7. Failing to refund within thirty days to purchasers who have

cancelled their contracts such monies as may be due and owing according to the terms of such contracts.

II

1. *It is further ordered, That:*

(a) Respondents herein deliver, by registered mail, a copy of this decision and order to each of their present and future franchisees, licensees, employees, sales representatives, agents, solicitors, brokers, independent contractors or to any other person who promotes, offers for sale, sells or distributes any course of instruction included within the scope of this order;

(b) Respondents herein provide each person or entity so described in subparagraph (a) of this paragraph with a form returnable to the respondents clearly stating his or her intention to be bound by and to conform his or her 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) Respondents herein inform each person or entity described in subparagraph (a) of this paragraph that the respondents will not use or engage or will terminate the use or engagement of any such party, unless such party agrees to and does file notice with the respondents that he or she will be bound by the provisions contained in this order;

(d) If such party as described in subparagraph (a) of this paragraph will not agree to file the notice set forth in subparagraph (b) above with the respondents and be bound by the provisions of this order, the respondents shall not use or engage or continue the use or engagement of such party to promote, offer for sale, sell or distribute any course of instruction included within the scope of this order;

(e) Respondents herein inform the persons or entities 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) Respondents herein 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) Respondents herein discontinue dealing with or terminate the use or engagement of any person described in subparagraph (a) above, who continues on his or her own any act or practice prohibited by this order as revealed by the aforesaid program of surveillance.

(h) Respondents herein maintain files containing all inquiries or

complaints from any source relating to acts or practices prohibited by this order, for a period of two years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission during the regular hours of the respondents' business for inspection and copying.

2. *It is further ordered*, That respondents herein present to each interested applicant or prospective student immediately prior to the commencement of any interview or sales presentation conducted at any location other than respondents' offices during which the purchase of or enrollment in any course of instruction offered by respondents herein is discussed or solicited, a 5" x 7" card containing only the following language:

YOU WILL BE TALKING TO A SALESPERSON.

3. *It is further ordered*, That respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

4. *It is further ordered*, That the respondent Diesel Truck Drivers Training School, Inc., 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, the creation or dissolution of subsidiaries or any other change in the respondent which may affect compliance obligations arising out of this order.

5. *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.

6. *It is further ordered*, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Complaint

86 F.T.C.

IN THE MATTER OF
ALLIED STORES CORPORATION T/A THE BON
MARCHE, ET AL.

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

Docket C-2760. Complaint, Nov. 3, 1975-Decision, Nov. 3, 1975

Consent order requiring a New York City department store chain and its wholly-owned subsidiary in Boise, Idaho, among other things to cease making unsubstantiated effectiveness claims for cosmetic skin care preparations. Respondents are required to have in their possession a written certification from a reliable source that there is a reasonable scientific basis for claims made and a summary of the reasonable basis.

Appearances

For the Commission: *Dennis D. McFeeley.*

For the respondents: *David Rigney, Sullivan & Cromwell, New York City.*

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 Allied Stores Corporation, dba The Bon Marche, and C. C. Anderson Stores Company, corporations, 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. Allied Stores 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 1114 Avenue of the Americas, New York, N.Y.

C. C. Anderson Stores Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal office and place of business located at 918 Idaho St., Boise, Idaho. C. C. Anderson Stores Company is a wholly-owned subsidiary of Allied Stores Corporation.

PAR. 2. Respondent Allied Stores Corporation is now, and for some time last past has been, a full-line department store chain. It operates 161 retail outlets throughout the United States and its gross sales for 1972 were \$1,311,775,590. Allied Stores Corporation owns and operates