

IN THE MATTER OF
ELECTRONIC COMPUTER PROGRAMMING INSTITUTE,
INC., ET AL.

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

Docket 8952. Complaint, Jan. 24, 1974 — Order, Oct. 26, 1976

Order dismissing a complaint issued against a New York City computer programming training school corporation for alleged violations of Section 5 of the Federal Trade Commission Act. Because of the corporation's impending dissolution, and the unavailability of sufficient assets for consumer redress satisfaction, the Commission held that further proceedings would not be in the public interest and ordered the complaint dismissed.

Appearances

For the Commission: *Deidre E. Shanahan* and *D. McCarty Thornton*,
IV.

For the respondents: *Lowenthal, Freedman, Landau, Fischer & Singer*, P.C., New York City, and *Sidney Davis*, 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 Electronic Computer Programming Institute, Inc., Chestkin Computer Corp., York Mountain Computer Corp., Data Processing Resources, Incorporated, and Electronic Computer Programming Institute of Fresno, Inc., 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. Respondent Electronic Computer Programming Institute, Inc. (hereinafter sometimes referred to as ECPI) is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 350 Fifth Ave., in the city of New York, State of New York. Respondent ECPI is now, and for some time last past has been, engaged in the formulation, development, offering for sale, sale and distribution of courses of instruction intended to prepare graduates thereof for entry-level employment as computer programmers. Respondent's volume of business in said courses of instruction has been, and is, substantial.

Respondent Chestkin Computer Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 528 Commonwealth Ave., in the city of Boston, Commonwealth of Massachusetts. It is a wholly-owned subsidiary of respondent ECPI. It is primarily engaged in the business of offering for sale, sale and distribution of courses of instruction intended to prepare graduates thereof for entry-level employment as computer programmers.

Respondent York Mountain Computer Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 805 East 3300 St., in the city of Salt Lake, State of Utah. It is a wholly-owned subsidiary of respondent ECPI. It is primarily engaged in the business of offering for sale, sale and distribution of courses of instruction intended to prepare graduates thereof for entry-level employment as computer programmers.

Respondent Data Processing Resources, Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 111 West St. Johns St., in the city of San Jose, State of California. It is a wholly-owned subsidiary of respondent ECPI. It is primarily engaged in the business of offering for sale, sale and distribution of courses of instruction intended to prepare graduates thereof for entry-level employment as computer programmers.

Respondent Electronic Computer Programming Institute of Fresno, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 258 North Blackstone Ave., in the city of Fresno, State of California. It is a wholly-owned subsidiary of respondent ECPI. It is primarily engaged in the business of offering for sale, sale and distribution of courses of instruction intended to prepare graduates therefrom for entry-level employment as computer programmers.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. In the course and conduct of their business of offering for sale, sale and distribution of courses of instruction, respondents, through individuals and entities who have entered into franchise agreements with respondent ECPI which authorize said individuals and entities to solicit and write enrollments in respondents' courses of instruction under the trade name "Electronic Computer Programming Institute of (*Name of Location*)," and through resident training facilities owned,

organized and operated by the respondents, have induced members of the general public to enroll in various courses of instruction.

Respondents, through their said franchisees and resident training facilities, place into operation and implement a sales program whereby members of the general public, by means of advertisements placed in broadcast and printed media of general circulation, and by means of brochures, pamphlets and other promotional literature disseminated through the United States mail or by other means, and through the use of salesmen and sales personnel, and by means of statements, representations, acts and practices as hereinafter set forth, are induced to sign contracts or enrollment agreements for a course of resident training of a stated length of time and a stated tuition cost.

Respondents arrange or extend credit for the financing of said executed contracts on deferred payment terms, and accept the proceeds and revenues flowing therefrom or derive substantial income from said executed contracts in the form of royalty payments made by franchisees to respondent ECPI.

In the manner aforesaid, respondent ECPI dominates, controls, furnishes the means, instrumentalities, services and facilities for, and condones, approves, and accepts the pecuniary and other benefits flowing from the acts and practices hereinafter set forth of respondents' resident training facilities and franchisees of ECPI.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents now cause, and for some time last past have caused, said aforementioned courses of instruction to be distributed from their places of business to said aforementioned resident training facilities and franchisees located in various States of the United States other than the State of origination of said courses. Respondents transmit and receive, and cause to be transmitted and received, in the course of the sale of, distribution of and financing of their courses of instruction by said resident training facilities and franchisees among and between the several States of the United States, retail installment contracts, royalty reports, checks, monies or other commercial paper. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said courses of instruction 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 resident training facilities and franchisees and the salespersons at the resident training facilities and franchisees have disseminated, or caused the dissemination, via the United States mail or other means, of radio, television, newspaper, print media or other forms of advertising, or other means and instrumentali-

ties which are furnished, approved, created or condoned by respondents. In conjunction therewith, respondents and their resident training facilities and franchisees and the salespersons at the resident training facilities and franchisees have made certain statements and representations respecting the large and growing demand for graduates of respondents' courses, the ease with which respondents' graduates are placed in positions for which they are trained, the lack of a need for formal education beyond high school in attaining employment, the existence of a present and growing demand for computer programmers as demonstrated by various statistical assertions, projections of occupational demand and the future growth of employment in the field of computer programming derived from the biennial publication of the United States Department of Labor entitled "Occupational Outlook Handbook" and the meaning of aptitude test results.

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

A. Newspaper and Direct Mail

If you're only earning \$7,000 a year how can you afford to live today? * * * Specializing is the answer to making MONEY TODAY. And COMPUTER PROGRAMMING is the specialty most in demand today. Trained computer programmers are writing their own tickets to happy, well paying secure futures.

* * * * *

If you're 18 or over and have a high school diploma or its equivalent, chances are that you can be a computer programmer. A college education is not necessary and you don't have to be a math whiz.

* * * * *

No previous experience is required, and no special math background is needed.

* * * * *

* * * you'll find that computer programmers are being called into just about every field of human endeavor. Government, medicine, * * * research, science * * *. The choice of job will be yours. There's just no comparable training today which gives you the choice of where and when to do your own thing.

* * * * *

If you have what it takes, next year at this time, you'll be a part of an in-group. Earning a good salary with a secure future.

* * * * *

All you need is a high school diploma or its equivalent and a desire to change your life.

* * * * *

Complaint

At present, there is a shortage of about 60,000 programmers in the United States. And from an estimated 120,000 programmers in 1968, growth in the industry will demand 250,000 by the end of this year and 500,000 within the next few years. Industry predicts a shortage of computer programmers through the 1970's, because of the accelerating use of computers and an urgent demand for people who can work them.

* * * * *

If you start right now, you can be a full-fledged computer programmer just in time for next year's frantic call. At this very minute, there are positions going begging for 60,000 people in every branch of business and industry. By the time you're ready for your first job, there'll be 250,000 jobs waiting for you.

* * * * *

Every year thousands of our students graduate and find jobs with good pay and good futures.

* * * * *

This year alone industry and government have openings for 25,000 well-trained computer programmers* * *. Here's what the Department of Labor said in a recent edition of EMPLOYMENT OUTLOOK: "Many thousands of new jobs for programmers will become available each year throughout the 1970's."

* * * * *

Head start* * * to next year's top \$\$\$ careers! Take our sample *APTITUDE QUIZ* inside and see if your *natural reasoning power* qualifies you to program computers.

* * * * *

B. Radio and Television

Qualified programmers can earn good money and buy things they've always dreamed of. All it takes is a high school diploma or its equivalent. At ECPI, we can teach* * *almost anybody.

* * * * *

If you're a high school senior, graduate or a college student worried about getting a job—a good job—with good pay and a real opportunity for advancement. A job with a big-name company-educational institute or the Federal government—learn all the facts about computer programming.

Where were you a year ago? Probably about 20 minutes from where you are right now. If you'd seen us, ECPI—Electronic Computer Programming Institute—a year ago, you'd probably have a much better job than you have right now. A job that pays more* * *. In fact, a specialized career.

* * * * *

* * *We do work hard to place our students and our percentages are high. Higher than almost anywhere we know of.

* * * * *

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 resident training facilities and franchisees and the salespersons of the resident training facilities and franchisees have represented, directly or by implication, that:

5(1) There is an urgent need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

5(2) 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 train such persons.

5(3) All or substantially all of respondents' graduates are able, on graduation, to secure the positions for which respondents have trained them.

5(4) Respondents had a reasonable basis from which to conclude that (a) at the time such representations were made, or (b) at the time of graduation of persons then enrolling in the course, thousands of respondents' graduates annually obtain positions as computer programmers.

5(5) Respondents had a reasonable basis from which to conclude (a) that at the time such representations were made a substantial number of respondents' graduates were being hired, or (b) that a substantial number of persons then enrolling in respondents' courses would upon graduation, be hired, by certain large, well-known industrial corporations or government agencies in the positions for which respondents train such persons.

5(6) The salaries of \$6,500 to \$11,000, as set out in the June 1969, edition of *Business Automation* were representative of the salaries as computer programmers that a substantial percentage of (a) persons graduating from respondents' courses, at the time such representations were made, were earning; or (b) persons then enrolling in respondents' courses would earn when they graduated.

5(7) Respondents had a reasonable basis from which to conclude that a substantial percentage of (a) persons graduating from respondents' courses at the time such representations were made, were earning; or (b) persons then enrolling in respondents' courses would earn when they graduated, a salary in excess of \$7,000 a year.

5(8) College education is not necessary or advantageous for the placement of respondents' graduates in positions for which respondents train such persons.

5(9) All that is necessary for the placement of respondents' graduates as programmers in scientific applications is the completion of respondents' course in computer programming.

5(10) Respondents' aptitude tests determine whether or not a person has the aptitude to work as a computer programmer and to succeed in such position.

5(11) The placement assistance furnished by respondents is free.

5(12) Respondents' graduates who seek employment in the field of electronic data processing do not find it necessary, in many instances, to seek said employment through sources other than respondents' placement office.

5(13) The respondents' sales representatives are interviewers, not salesmen, who are contacting persons in their homes primarily to determine if the prospect is qualified to undertake the course of instruction offered by the respondents, if the prospect will be satisfied with employment in the field of computer programming, and to determine if the respondents can enable the prospect to attain the monetary and professional rewards he wants for himself, or for other purposes other than the sale of an enrollment in one of the courses offered by the respondents.

5(14) If the prospect does not come to the school premises to take the formal aptitude test, the prospect is not entitled to receive a refund of the registration fee he has paid.

PAR. 6.

6(1) In truth and in fact:

At the time it was so represented there was not an urgent need or demand for all or most of respondents' graduates, in positions for which respondents train such persons.

6(2) In truth and in fact:

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 train such persons.

6(3) In truth and in fact:

All or substantially all of respondents' graduates are not able, on graduation, to secure the positions for which respondents have trained them.

6(4) In truth and in fact:

Respondents had no reasonable basis for representing that (a) at the time such representations were made, or (b) at the time of graduation of persons then enrolling in respondents' course, thousands of respondents' graduates annually obtain positions as computer programmers.

6(5) In truth and in fact:

Respondents had no reasonable basis from which to conclude (a) that at the time such representations were made a substantial number of respondents' graduates were being hired, or (b) that a substantial number of persons then enrolling in respondents' courses would, upon graduation, be hired, by certain large, well-known industrial corporations or government agencies in the positions for which respondents train such persons.

6(6) In truth and in fact:

The salaries of \$6,500 to \$11,000, as set out in the June, 1969, edition of *Business Automation* were not representative of the salaries as computer programmers that a substantial percentage of (a) persons graduating from respondents' courses, at the time such representations were made, were earning, or (b) persons then enrolling in respondents' courses would earn when they graduated.

6(7) In truth and in fact:

Respondents had no reasonable basis from which to conclude that a substantial percentage of (a) persons graduating from respondents' courses, at the time such representations were made, were earning; or (b) persons then enrolling in respondents' courses would earn when they graduated, a salary in excess of \$7,000 a year.

6(8) In truth and in fact:

In most instances college education is advantageous for the placement of respondents' graduates as programmers and in many instances college education is necessary for such placement.

6(9) In truth and in fact:

In many instances a college degree in a science or mathematical discipline is necessary for the placement of respondents' graduates as programmers in scientific applications.

6(10) In truth and in fact:

Respondents' aptitude tests do not determine whether or not a person has the aptitude to work as a computer programmer and to succeed in such position. Respondents' sample aptitude quizzes are merely sales devices. Respondents' entrance examination aptitude tests are designed only to determine whether or not a person will be likely to complete any of the courses of instruction offered by respondents.

6(11) In truth and in fact:

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

6(12) In truth and in fact:

Respondents' graduates who seek employment in the field of electronic data processing do find it necessary, in many instances, to

seek said employment through sources other than respondents' placement office.

6(13) In truth and in fact:

Respondents' sales representatives are commissioned salesmen, not just interviewers, and are not contacting persons in their homes primarily to determine if the prospect is qualified to undertake the course of instruction offered by the respondents, if the prospect will be satisfied with employment in the field of computer programming, or if the respondents can enable the prospect to attain the monetary and professional rewards he wants for himself. To the contrary, the principal purpose for contacting such persons is to sell enrollments in one of the courses of instruction offered by the respondents.

6(14) In truth and in fact:

The prospect is entitled to receive a refund of the registration fee he has paid in the event that he does not come to the school premises to take the formal aptitude test administered by the respondents.

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

PAR. 7.

7(a) In the further course and conduct of their business, and in the furtherance of their purpose of inducing the purchase of their courses by the general public, respondents and their resident training facilities and franchisees directly or indirectly, have held out commissioned salespersons to be qualified or trained vocational counselors, or instructed their salespersons to create a "counseling" atmosphere during selling sessions. Respondents thereby have falsely and deceptively represented that such persons were in a position to give disinterested advice to prospective students as to the best career choice for them, when in fact such persons had a direct or indirect economic interest in whether the applicants enrolled at respondents' schools.

7(b) Respondents have induced high school seniors to purchase certain of their courses of instruction by conducting dramatized demonstrations of the use of computers and the programming of computers. Said dramatized demonstrations have been conducted at high schools in various States of the United States and have emphasized the fact that programming a computer is a simple task which requires no college training, no special mathematical ability, and only the desire to succeed. Respondents have thereby falsely and deceptively represented that high school seniors who are interested in programming computers will be assured of employment as computer programmers if they enroll in one of the courses of instruction offered by the respondents, when in fact the dramatized demonstrations do not

present an accurate picture of computer programming or the availability of jobs for persons with only a high school education.

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

PAR. 8. 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; that substantial numbers of respondents' graduates are being hired by certain large, well-known, industrial corporations or government agencies; that a substantial number or percentage of graduates of the respondents' courses of instruction earn a salary in excess of \$7,000 per year and that each year the respondents successfully place thousands of such graduates as computer programmers. At the time said representations were made respondents had no reasonable basis adequate to support such representations. Therefore, the aforesaid acts and practices were, and are, unfair acts or practices.

PAR. 9. Respondents offered for sale courses of instruction intended to prepare graduates thereof for entry-level employment as computer operators and computer programmers 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 graduate for each course offered; (3) the initial salary any such recent graduates 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 graduation 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. 10.

(a) Respondents as aforesaid, have been, and are now failing 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. 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.

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 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, as aforesaid, failing 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.

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

PAR. 11. 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 may mislead and deceive the public in the manner and as to the things hereinabove alleged.

PAR. 12. In the course and conduct of their 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 of courses of instruction covering the same or similar subjects.

PAR. 13. The use by respondents of the aforesaid false, misleading, unfair or deceptive statements, representations, acts and practices, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true, and to induce a substantial number thereof to purchase respondents' courses by reason of said erroneous and mistaken belief.

PAR. 14. 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.

Order

88 F.T.C.

ORDER

The administrative law judge has certified complaint counsel's motion 1) to dismiss the complaint in this matter, with the Commission reserving the right to take further action as the public interest may require; 2) that the Commission direct the General Counsel not to file proofs of claim in the pending bankruptcy proceedings relating to respondents; and 3) that the Commission withdraw its direction to the General Counsel¹ that he seek court enforcement of subpoenas issued to Sidney Davis and William S. Kalaboke.

The Commission agrees with complaint counsel that further proceedings are not in the public interest in view of the impending dissolution of the respondent corporations, the insubstantiality of the assets that would be available for satisfaction of a consumer redress award² and the cost of further proceedings.

The Commission has, therefore, determined that complaint counsel's motion be, and it hereby is, granted. The Commission's decision to dismiss the complaint is without prejudice to the taking of such further action as the public interest may require.

It is so ordered.

Commissioner Dole did not participate by reason of absence.

¹ See order, September 21, 1976.

² Pursuant to Section 19(a)(2) of the Federal Trade Commission Act.

IN THE MATTER OF
LAFAYETTE UNITED CORPORATION, ET AL.

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

Docket 896J. Complaint, May 2, 1974 — Decision, Oct. 26, 1976

Consent order requiring a North Providence, R.I., correspondence school, among other things to cease misrepresenting its authority to award high school equivalency diplomas; misrepresenting employment opportunities, industry demand, job placement services; misrepresenting the titles or qualifications of their sales personnel; the importance of English in training and employment; and the imminency of legal action in delinquent debt collection. Further, respondents are required to make written disclosures (in Spanish, if applicable) regarding drop-out and job placement rates, starting salaries, names of firms employing graduates, and customers' rights to cancellation and refunds. Additionally, respondents must provide a \$200,000 restitution fund, institute a good-faith search for persons eligible for refunds, and to make proper refunds to those identified.

Appearances

For the Commission: *Raymond J. McNulty, David W. DiNardi, Charles M. LaDue and Alice C. Kelleher.*

For the respondents: *Peter J. Mansbach, Kronish, Lieb, Shainswit, Weiner & Hellman, 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 Lafayette United Corporation, Lafayette Academy, Inc., Lafayette Motivation Media, Inc., corporations, and Stuart Bandman, individually and as an officer and Chairman of the Board of Directors of Lafayette United Corporation, hereinafter sometimes 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 Lafayette United Corporation, (hereinafter sometimes referred to as United) 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 984 Charles St., North Providence, Rhode Island. United was incorporated in May 1972 and established as a holding company in July 1972. Through its wholly-owned subsidiary, Lafayette Academy, Inc., it has engaged in