

IN THE MATTER OF

MAYDAY COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2866. Complaint, Nov. 12, 1976 — Decision, Nov. 12, 1976*

Consent order requiring a Seattle, Wash., correspondence school, and its advertising agency, among other things to cease misrepresenting the salary ranges and employment opportunities available to its graduates; misrepresenting endorsements or recommendations of government agencies; misrepresenting the purpose, benefit or significance of placement tests given by respondents; and failing to disclose pertinent terms and conditions regarding sales contracts. Further, respondents are to provide disclosures as to cancellation procedures and rights to refunds, and to provide a ten-day cooling-off period during which prospective students may cancel their contracts with full refunds.

Appearances

For the Commission: *Sharon S. Armstrong.*

For the respondents: *John R. Tomlinson*, Seattle, Wash. and *C. M. McCune*, Seattle, Wash.

COMPLAINT

The Federal Trade Commission, having reason to believe that Mayday Company, Inc., a corporation, G. Ward Keller, individually and as an officer of said corporation, Richard M. Jackson, an individual, and Ricks-Ehrig, Inc., a corporation, hereinafter sometimes referred to as respondents, have violated and, with the exception of Ricks-Ehrig, Inc., are now violating Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and believing that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint:

PARAGRAPH 1. Respondent Mayday Company, Inc. (hereinafter Mayday) is a Washington corporation with its principal office and place of business located at 1511 Queen Anne Ave. North, Seattle, Washington.

Respondent G. Ward Keller is an individual and an officer of Mayday. He formulates, directs, and controls the policies, acts and practices of Mayday, including those hereinafter set forth. His address is the same as that of Mayday.

Respondent Richard M. Jackson is an individual and a former officer of Mayday. Together with respondent Keller, he formulated, directed and controlled the policies, acts and practices of Mayday, including the

acts and practices hereinafter set forth. His address is 2846 West Viewmont Way West, Seattle, Washington.

Respondents Mayday, Keller and Jackson are hereinafter referred to collectively as the Mayday respondents.

Respondent Ricks-Ehrig, Inc. (hereinafter Ricks-Ehrig) is a Washington corporation with its office and principal place of business located at Eighth Floor, Fourth & Vine Building, Seattle, Washington.

The aforementioned respondents have cooperated and acted together in bringing about and carrying out the acts and practices hereinafter set forth, with the exception of Ricks-Ehrig as to those acts and practices set forth in Paragraphs Twelve through Fifteen and Seventeen through Nineteen.

PAR. 2. The Mayday Respondents are now and have been engaged in the formulation, promotion, advertising, offering for sale, sale, and distribution of a course of home study and instruction purporting to prepare graduates thereof for employment in the fields of security and investigative work, including such positions as store detective, airport security, accident investigator, private investigator, undercover agent, insurance investigator, missing persons tracer, and industrial security guard. Said course consists of a series of home study lessons pursued by correspondence through United States mail.

PAR. 3. Respondent Ricks-Ehrig was the advertising agency for Mayday from November 1971 until April 1973. In such capacity, Ricks-Ehrig has created, prepared and placed for publication various advertisements, including but not limited to the advertising referred to herein, to promote the sale of the Mayday course of study. In the course and conduct of its business, Ricks-Ehrig has been and is now in substantial competition, in or affecting commerce, with other corporations, firms and individuals in the advertising business.

PAR. 4. In the course and conduct of their business, the Mayday respondents cause the correspondence portion of their course, when sold, to be sent from their place of business in the State of Washington to purchasers located in Oregon, California, Alaska, and various other States in the United States. Thus, said respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said course of study and instruction in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of their businesses, and for the purpose of inducing the purchase of the aforesaid course of study and instruction, the Mayday respondents and respondent Ricks-Ehrig have made and caused to be made, through advertisements disseminated in newspapers of interstate circulation and in television broadcasts

received in States other than the State of broadcast and in Canada, and through other forms of advertising, numerous statements and representations respecting the Mayday course, the services provided by Mayday, employment opportunities in the fields of security and investigation, the rewards of such work, and the necessity for and usefulness of Mayday training in obtaining security and investigational employment.

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

A. On Television

Today, with proper training, you could enter the exciting field of the private investigator * * * or you could have a new life as an accident investigator * * *.

Civil crime is growing eleven times faster than the population. That means trained investigators and security personnel are needed now. Today with proper training from the Mayday Company, you can join the thousands of men and women who have found exciting careers in crime prevention. You could safeguard some of America's largest corporations in industrial security * * * meet the challenge of a store detective * * * work in airport security * * * or guard homes and businesses on a security patrol.

I opened my own detective agency in September. The skills I learned at Mayday are ones I use every day on the job. If it hadn't been for Mayday I probably wouldn't be where I am today.

B. In Newspapers, Magazines, Brochures and Other print Media

DID YOU KNOW THAT CRIME IS GROWING MORE THAN ELEVEN TIMES FASTER THAN THE POPULATION? That means there are jobs right now in the fast-growing field of investigation and security. To join one of America's most exciting professions, you need the right training.

Mayday, the nation's leading investigation and security training school, can give you the start you need in fields like:

Store Detective	Undercover Agent
Airport Security	Insurance Investigator
Accident Investigator	Missing Persons Tracer
Private Investigator	Industrial Security

No previous education or experience is necessary.

Mayday gives *placement assistance* to all graduates.

Mayday training is approved for veterans. For eligible veterans, the government will pay all costs.

We're an eligible institution under the Federally Insured Student Loan program. Accepted students need pay no money down. Small monthly payments begin nine months after graduation.

You learn through actual field assignments, audio-visual workshops and at-home study.

Mayday has training facilities in your area.

PAR. 6. 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 have represented, directly or by implication, that:

A. There is now and will continue to be in the foreseeable future an urgent need or demand for trained people in the fields of investigation and security.

B. Well-paid positions and career opportunities in investigative and security work are available to persons who have completed Mayday's course but lack other education and experience in such work.

C. Prior training is required before a person can obtain employment in the fields of investigation and security, and Mayday provides that training.

D. Mayday maintains a placement service which assists its graduates in finding employment.

E. In substantially all instances, Mayday supplements its home study materials with field assignments and classroom workshops in a training facility located near the student's home.

F. The Mayday course has been endorsed or approved as to quality by the United States Veterans Administration.

G. All students accepted under the Federally Insured Student Loan (FISL) program are excused from making any payments until nine months after graduation.

PAR. 7. In truth and in fact:

A. Respondents have no reasonable basis from which to conclude that there is now or will be in the foreseeable future an urgent need or demand for trained people in the fields of investigation and security.

B. Well-paid positions and career opportunities in investigative and security work are not available to persons who have completed Mayday's course but lack other education and experience in such work.

C. Many jobs in the fields of investigation and security do not require prior training. Moreover, some major employers of industrial security personnel prefer to do their own training and regard a mail-order course as a drawback in a candidate for employment. Those jobs which do require prior training and experience require training and experience of a type different than that provided by Mayday.

D. Mayday did not, throughout the period the representation was made, maintain a placement service. Such placement assistance as

Mayday has provided has been ineffective in finding employment for Mayday graduates.

E. At some times and in some areas where the representation was made, Mayday did not provide field assignments or classroom workshops, and did not have training facilities.

F. The Mayday course has not been endorsed or approved as to quality by the United States Veterans Administration. The willingness of the Veterans Administration to pay the costs of such training is not an endorsement of the course by such agency.

G. Students accepted under the Federally Insured Student Loan program are not necessarily excused from making any payments until nine months after graduation. Under applicable Federal regulations, the student may be required to begin repayment earlier than nine months after graduation.

Therefore, the statements and representations set out in Paragraphs Six and Seven were and are false, misleading and deceptive.

PAR. 8. Among the advertisements described and alluded to in Paragraph Five hereof are brochures and other promotional matter which contain photographs and professional identifications of persons who have purportedly completed the Mayday course. Typical and illustrative thereof are the following:

What Some of our Graduates Are Doing:



John Engstler
Vice President
and General Manager
Detective Agency



Art Kaplan
Representative
Finance Company



Raymond D. McKenna
Self Investigator
Legal Firm



John Rogers
Investigator
Detective Agency

PAR. 9. Through the use of said advertisements containing photographs and identifications, respondents have represented, directly or by

implication, that the typical graduate of Mayday's course can reasonably expect to obtain a position of responsibility and status such as those identified in the advertisements, and that the Mayday course is a substantial factor in obtaining such positions. In fact, the positions attained by the individuals depicted do not reflect the typical or ordinary experience of graduates of Mayday's course, and Mayday's course was not a determinative or substantial factor in their obtaining such positions. Such facts, if known to consumers, would be likely to affect their decision to purchase the Mayday course. Therefore, respondents have failed to disclose material facts in their advertising.

PAR. 10. Among the advertisements described and alluded to in Paragraph Five hereof are advertisements which set forth endorsements of Mayday's course by various persons. Typical and illustrative thereof are the following:

A. On Television

Announcer: Here's Gerry Poth, former police detective and now first vice president of the World Association of Detectives.

Poth: I hire Mayday graduates for my detective agency because I know Mayday training is the best and most complete.

B. In Print Media

What the Professionals Think:



John C. Hoberg
Detective, Seattle Police Department
Lt. Col., U.S. Army Reserve

"For the past 19 years, I've been associated with the Seattle Police Department as a detective and an instructor in the Police Academy. I've also worked extensively with the Military Police. And I find the training available through the Mayday Investigation & Security Training School an invaluable prerequisite for investigation and security work.

"The instructors are expertly qualified. Courses are excellently presented and very pertinent to the tasks an investigator faces every day. The approach is realistic, practical, professional.

"There's no better way to prepare for a career in the investigation-security field. And no vocational training offers a more compatible use of a person's military experience."

PAR. 11. In the aforesaid advertisements setting forth endorsements of Mayday's course, and in other advertisements of similar import and

meaning but not expressly set out herein, respondents have failed to disclose that the persons identified as endorsing said course are paid consultants of Mayday, or owners of businesses related to Mayday, or are compensated by Mayday for making said endorsements. Such facts, if known to consumers, would be likely to substantially limit or nullify the impact of such endorsements and affect the consumers' decision to purchase the Mayday course. Therefore, respondents have failed to disclose a material fact in their advertising.

PAR. 12. In the further course and conduct of their business, the Mayday respondents cause prospective purchasers of their course to be interviewed by sales representatives, usually at the place of residence of individual prospective purchasers. Said sales representatives endeavor to sell and do sell the Mayday course of instruction to such prospective purchasers. For the purpose of inducing the sale of Mayday's course, said sales representatives make many statements and representations, directly and by implication, regarding said course and the benefits thereof, both orally and by means of brochures and other promotional material displayed to prospective purchasers.

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

A. Any person who passes the Mayday entrance test or tests is capable of successfully completing the course of instruction.

B. All persons accepted for enrollment in the Mayday course meet minimum standards of physical fitness, reading ability and bondability necessary to obtain entry-level positions in the fields of investigation and security.

C. Mayday provides to each of its graduates membership in an exclusive and prestigious professional organization affiliated with the United States Government, namely the International Police Congress.

D. Graduates of the Mayday course will receive college credit for said course.

E. Mayday will pay a referral fee or other compensation to each and every student who refers to Mayday a stated number of prospective students who ultimately enroll in the course.

PAR. 13. In truth and in fact:

A. Mayday's entrance tests do not determine whether a person is capable of completing the course of instruction. Mayday accepts as students persons with test scores indicative of insufficient reading ability to comprehend the course materials.

B. Not all persons accepted for enrollment in the Mayday course meet minimum standards of physical fitness, reading ability, and bondability necessary to obtain entry-level positions in the fields of investigation and security. Indeed, Mayday has accepted as students

persons who are legally blind, persons who are deaf and mute, persons who are lame, persons who cannot read, and persons with prior felony convictions.

C. Mayday does not provide to each of its graduates membership in the International Police Congress, and said Congress is not an exclusive and prestigious professional organization affiliated with the United States Government. Membership in said organization is available to any person who is actively engaged in some aspect of the investigation profession, is of good reputation and character, is licensed (where required), and pays the annual membership fee.

D. Graduates of the Mayday course do not receive college credit for said course.

E. Mayday does not pay a referral fee or other compensation to each and every student who refers to Mayday the stated number of prospective students who ultimately enroll in the course.

PAR. 14. The Mayday respondents have offered for sale their aforesaid course of home study instruction purporting to prepare purchasers thereof for employment as investigators and security personnel without disclosing in advertising or through their sales representatives: (1) the recent percentage of persons who have completed Mayday's course and have obtained employment in the positions for which they were trained, (2) the employers that hired such persons, (3) the initial salary such persons received, and (4) the percentage of recent enrollees who have failed to complete their course of instruction. Knowledge of such facts would indicate to prospective purchasers the possibility of securing future employment upon graduation and the nature of such employment. Thus, the Mayday respondents have failed to disclose material facts which, if known to consumers, would be likely to affect their decision to purchase the Mayday course.

PAR. 15. In the further course and conduct of their business, and for the purpose of preventing students from withdrawing from their course, the Mayday respondents have represented that tutoring will be provided to students who need such help. However, in some instances no tutoring was provided and the students were merely given answers to lesson test questions. The Mayday respondents have thereby falsely and deceptively represented that tutoring assistance was available when in fact it was not.

PAR. 16. The statements, representations and failures to disclose material facts by respondents, described in Paragraphs Eight through Fifteen hereof, were and are misleading, deceptive and unfair acts or practices.

PAR. 17. In the further course and conduct of their business the Mayday respondents have retained as sales representatives military

officers who personally offer for sale and sell the Mayday course to enlisted personnel on military bases. Because of the pressures inherent in the system of military rank, some enlisted personnel have been induced to purchase the Mayday course who would not have purchased the course from a non-officer sales representative. Such purchasers have been denied the opportunity to choose freely the education to be purchased with their military education benefits and have thereby lost some of the value of said benefits.

Therefore, the Mayday respondents' utilization of military officers as sales representatives to sell the Mayday course to enlisted personnel on military bases was and is an unfair act or practice.

PAR. 18. In the further course and conduct of their business, the Mayday respondents have utilized a financing system by which prospective students deemed eligible for veteran education benefits execute at the time of enrollment in Mayday's course (1) an application for veteran education benefits, and (2) a retail installment contract to Mayday for the cost of the course, which is assigned by Mayday to a third party lender.

In some instances the Mayday respondents have failed to disclose to the student that the lender may hold the student liable in the event that veteran education benefits are delayed or denied. Thus, the Mayday respondents have failed to disclose a material fact which, if known to prospective students, would be likely to affect their decision to purchase the Mayday course. Failure to disclose said fact was and is misleading, deceptive and unfair.

PAR. 19. The use by respondents of the aforesaid false, misleading, unfair and deceptive statements, representations, acts and practices has had, and now has, the tendency and capacity 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 the Mayday respondents' course by reason of said erroneous and mistaken belief.

PAR. 20. In the course and conduct of their business, and at all times mentioned herein, the Mayday respondents have been and now are in substantial competition, in or affecting commerce, with corporations, firms, and individuals engaged in the sale and distribution of courses of instruction covering the same or similar subjects as those sold by Mayday.

PAR. 21. 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 and unfair

methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; 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 aforesaid draft of complaint, 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 thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty days, and having duly considered comments filed pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

A. Respondent Mayday Company, Inc. (hereinafter Mayday) is a Washington corporation with its office and principal place of business located at 1511 Queen Anne Ave. North, Seattle, Washington.

Respondent G. Ward Keller is an officer of Mayday. He formulates, directs and controls the policies, acts and practices of Mayday, and his address is the same as that of Mayday.

Respondent Richard M. Jackson was an officer of Mayday until March 1975. Together with respondent Keller he formulated, directed and controlled the policies, acts and practices of Mayday. His address is 2846 West Viewmont Way West, Seattle, Washington.

Respondents Mayday, Keller and Jackson are hereinafter sometimes referred to collectively as the Mayday respondents.

Respondent Ricks-Ehrig, Inc. (hereinafter Ricks-Ehrig) is a Washington corporation with its office and principal place of business located at

Eighth Floor, Fourth & Vine Building, Seattle, Washington. Ricks-Ehrig was the advertising agency for Mayday from November 1971 until April 1973.

B. 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 Mayday Company, Inc. and Ricks-Ehrig, Inc., corporations, their successors and assigns, and their officers, and G. Ward Keller, individually and as an officer of Mayday, and Richard M. Jackson, an individual, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchisee, licensee or other device, in connection with the advertising, offering for sale, sale or distribution of any course of study, training or instruction purporting to prepare or qualify individuals for employment or training in any occupation, trade or in work requiring mechanical, technical, business, trade, artistic, supervisory, clerical or other skills, or purporting to enable a person to improve his or her skills in any of these categories, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Representing, orally, in writing, visually, or in any other manner, directly or by implication:

1. The general conditions or employment demand in any employment market now or at any time in the future.
2. The amount of salary or earnings generally available to persons employed in any occupation.
3. The specific employment opportunities available or demand for persons who purchase such course or courses of study, provided that respondents may disclose the information contained in Paragraph II(G)(1)-(3) of this order if all three disclosures appear together.
4. The specific amount of salary or earnings available to persons who purchase such course or courses of study, provided that respondents may disclose the information contained in Paragraph II(G)(1)-(3) of this order if all three disclosures appear together.
5. The training provided by such course or courses is a prerequisite to obtaining employment in the vocation or fields covered by such courses.
6. Placement assistance will be provided to persons who complete its course, unless respondents can establish that they provide, at all

times and in all locations in which the representation is made, placement assistance which is effective in finding employment for their graduates, and unless such representation is accompanied by the information specified in Paragraph II(G)(2) of this order; or misrepresenting, in any manner, the nature or effectiveness of any placement assistance provided by respondents.

7. Home study materials will be supplemented with field assignments, classroom workshops or training facilities near the student's home, unless respondents can establish that such is the fact at all times and in all locations in which the representation is made.

8. Said courses are approved, recommended or endorsed by any government or agency thereof; *provided, however*, that if eligible veterans may receive financial assistance from the United States Veterans Administration to pay for such courses, respondents may state this fact.

9. Students accepted under any governmentally assisted or insured student loan program are excused for any period from making payments, unless respondents clearly and conspicuously disclose, in immediate conjunction therewith, the full terms regarding time limitations applicable to such payments.

10. The endorsement of such course or courses by any person, organization or association has been given without compensation when such is not the fact; or failing to disclose the fact of compensation unless the endorser is an expert, or the endorser is known to a significant portion of the viewing public, or the compensation or promise of compensation was given subsequent to the giving of the endorsement.

11. Such course or courses are endorsed by any person, organization or association without disclosing that such person, organization or association either in whole or in part owns or is owned by, or is employed by the advertiser, unless such is not the fact.

B. Making any representations of any kind whatsoever in connection with the advertising, promoting, offering for sale, sale or distribution of any course of study, training or instruction in the fields of investigation or security or any other subject, trade or vocation in or affecting commerce, for which respondents have no reasonable basis prior to the making or dissemination thereof.

It is further ordered, That the Mayday respondents and their successors, assigns, agents, representatives and employees, directly or through any corporation, subsidiary, division, franchisee, licensee or other device, in connection with the advertising, offering for sale, sale

or distribution of any course of study, training or instruction purporting to prepare or qualify individuals for employment or training in any occupation, trade, or in work requiring mechanical, technical, business, trade, artistic, supervisory, clerical or other skills or purporting to enable a person to improve his skills in any of these categories in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Representing orally, in writing, or in any other manner, directly or by implication that:

1. Any entrance examination or aptitude test or quiz determines whether a person is capable of completing said course or courses of instruction or is qualified for employment or will achieve employment in the vocation or fields covered by such courses; or misrepresenting in any manner the meaning, purpose, benefit, significance or use of any examination or test or its results.

2. Acceptance for enrollment in said course or courses bears any significance whatsoever to physical, educational, character or other qualifications necessary to obtain any position in the vocation or field covered by such courses.

3. Each of respondents' graduates is provided membership in any professional organization, or that successful completion of said course or courses is a requirement for membership in any professional organization; or misrepresenting in any manner the meaning, purpose, benefit, or significance of membership in the International Police Congress or any other professional organization.

4. Graduates of said course or courses will receive college credit for their course work; or misrepresenting in any manner the meaning, purpose, benefit, or significance of credit from any course work approval entity.

5. A referral fee or other compensation will be paid to students who refer to respondents prospective students who ultimately enroll in said course or courses, unless respondents can establish that such fee or other compensation is in fact paid to each student entitled thereto within ten (10) days of qualification therefor.

B. Providing students with answers to test questions before the test is taken, or assisting students in the completion of lessons in any other manner which does not genuinely aid the student in understanding the lesson; or representing that tutoring is provided when it is not.

C. Compensating any employee on the basis of the number of lessons completed by students.

D. Failing to disclose, in any instance in which a student applies for veteran education benefits or any other governmental assistance, for the purpose of paying for said course, training or instruction, and also

executes a retail installment contract for the amount of the course, that the payee or its assignee may hold the student liable for the amount of the retail installment contract in the event veteran education benefits or other governmental assistance is delayed or denied.

E. Using military personnel on active duty to solicit or sell to military personnel junior in rank or grade, at any time, on or off duty, in or out of uniform, any product or service.

F. Furnishing or otherwise placing in the hands of others the means and instrumentalities by and through which the public may be misled or deceived in a manner prohibited by this order, or by acts and practices prohibited by this order.

G. Failing to disclose in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any course of instruction, the following information in the format prescribed in Appendix A and for a base period determined as described in Appendix B:

1. The number and percentage of enrollees who have failed to complete their course of instruction, such percentage to be computed separately for each course of instruction offered by respondents;

2. The number and percentage of enrollees and of graduates who obtained employment within three months of leaving a school in a position for which respondents' course of instruction prepared them; such rate or percentage to be computed separately for each course of instruction offered by respondents;

3. The salary range of respondents' graduates who obtained employment within three months of leaving a school in a position for which respondents' course of instruction prepared them, the percentage ratio of such graduates to the total number of enrollees, and the percentage ratio of such graduates to the total number of graduates;

4. A list of firms or employers which are currently hiring graduates of said courses in substantial numbers and in the positions for which such graduates have been trained, and the number of such graduates hired, as to the same graduates used to compute the placement percentage in (2) above.

Provided, however, this paragraph shall be inapplicable to any course newly introduced by respondents, until such time as the new course has been in operation for the base period established pursuant to Appendix B as prescribed in this paragraph. However, during such period the following statement, and no other, shall be made in lieu of the Appendix A Disclosure Form required by this paragraph:

DISCLOSURE NOTICE

This school [or course, as the case may be] has not been in operation

long enough to indicate what, if any, actual employment or salary may result upon graduation from this school [course].

H. 1. Contracting for the sale of any course of instruction in the form of a sales contract or any other agreement which does not contain, in immediate proximity to the space reserved in the contract for the signature of the prospective enrollee, the following statement in 10-point or larger boldface type:

You, the prospective enrollee, may cancel this transaction and receive a full refund at any time prior to midnight of the tenth business day after the day of this transaction. If you withdraw after 10 days, you are entitled to a partial refund. See attached cancellation and withdrawal forms for explanations of these rights.

2. Failing to furnish each prospective enrollee, at the time he or she signs the sales contract or otherwise agrees to enroll in a course of instruction offered by respondents, complete cancellation and withdrawal forms in duplicate which shall be attached to the contract or agreement and easily detachable therefrom, and which shall contain in ten (10) point or larger boldface type the following information and statements:

NOTICE OF CANCELLATION DURING TEN-DAY COOLING OFF
PERIOD

[enter date of transaction]

(date)

YOU MAY CANCEL THIS TRANSACTION WITHOUT ANY PENALTY OR OBLIGATION, WITHIN TEN (10) BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN (10) BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY, IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY (20) DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU

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FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PAYMENT FOR SAID GOODS.

TO CANCEL THIS TRANSACTION AND OBTAIN A FULL REFUND, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO *[name of seller (must be filled in)]*, AT *[address of seller's place of business (must be filled in)]* NOT LATER THAN MIDNIGHT OF *[date (must be filled in)]*.

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

NOTICE OF WITHDRAWAL AFTER EXPIRATION OF TEN-DAY
COOLING OFF PERIOD

[enter date of transaction]

(date)

AFTER THE TEN-DAY COOLING OFF PERIOD EXPIRES YOU ARE STILL FREE TO WITHDRAW FROM THIS COURSE AT ANY TIME. YOU WILL HAVE TO PAY ONLY FOR LESSONS SUBMITTED TO THE SCHOOL PLUS A REGISTRATION FEE OF FIVE PERCENT (5%) OF THE TOTAL CONTRACT PRICE, NOT TO EXCEED TWENTY-FIVE DOLLARS (\$25).

THE AMOUNT YOU WILL HAVE TO PAY FOR THE LESSONS SUBMITTED WILL BE DETERMINED BY DIVIDING THE NUMBER OF LESSONS SUBMITTED UP TO THE TIME OF YOUR WITHDRAWAL BY THE TOTAL NUMBER OF LESSONS CONTAINED IN THE COURSE. IF, PRIOR TO WITHDRAWAL, YOU HAVE PAID MORE THAN THIS AMOUNT PLUS THE REGISTRATION FEE, THE EXCESS WILL BE REFUNDED TO YOU WITHIN TEN (10) BUSINESS DAYS.

TO WITHDRAW FROM THIS COURSE AFTER THE TEN-DAY COOLING OFF PERIOD EXPIRES, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS WITHDRAWAL NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO *[name of seller (must be filled in)]*, AT *[address of seller's place of business (must be filled in)]*. YOU MAY ALSO WITHDRAW BY FAILING TO SUBMIT A LESSON FOR NINETY (90) DAYS.

I HEREBY WITHDRAW FROM THIS COURSE.

(Date)

(Buyer's signature)

3. Failing to orally inform each prospective enrollee, at the time he or she signs a contract or agreement for the sale of any course of instruction, of his or her right to cancel or withdraw.

4. Misrepresenting in any manner the prospective enrollee's right to cancel or withdraw.

5. Initiating contacts with such contracting persons prior to expiration of the ten-day cooling off period described herein.

6. Failing or refusing to take the following actions within ten (10) business days after the receipt of any valid notice of cancellation by a prospective enrollee during the ten-day cooling off period:

- a. Refund all payments under the contract or sale;
- b. Return any goods or property trade-in, in substantially as good condition as when received by respondent;
- c. Cancel and return any negotiable instrument executed by the prospective enrollee in connection with the contract or sale.

7. Failing or refusing to take the following actions within ten (10) business days after (1) receipt of an enrollee's notice of withdrawal, or (2) expiration of a 90-day period during which a student fails to submit a lesson:

a. Refund a pro rata portion of the total contract price, plus a registration fee of five percent (5%) of the total contract price but not to exceed twenty-five dollars (\$25). For purposes of this provision:

(i) Withdrawal shall mean the date of mailing or delivering to the school a signed and dated copy of the "Notice of Withdrawal," a student's written letter or telegram of withdrawal, or a lapse of ninety (90) days since the student's submission of a lesson.

(ii) The pro rata portion shall be determined by dividing the number of correspondence lessons submitted by the student prior to withdrawal, by the total number of lessons contained in the course, and multiplying the total contract price by the result.

b. Cancel that portion of the student's indebtedness which exceeds the amount due respondents under the refund formula of this provision.

III

It is further ordered, That the Mayday respondents, their successors and assigns:

A. Deliver, by registered mail, a copy of this order to each of their present and future franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors, advertising agencies, and other persons who promote, offer for sale, sell or distribute any course of instruction covered by this order.

B. Provide each person so described in paragraph A above with a form returnable to respondents clearly stating his or her intention to agree with respondents to conform his or her business practices to the requirements of this order; retain said statement during the period said person is so engaged; and make said statement available to the Commission's staff for inspection and copying upon request.

C. Inform each person so described in paragraph A above that

respondents will not use or engage and will terminate the use or engagement of any such person unless such person agrees to and does file notice with respondents that he or she agrees to conform his or her business practices to the provisions contained in this order.

D. Shall not use or engage or continue the use or engagement to promote, offer for sale, sell or distribute any course of instruction whatsoever, of any such party as described in paragraph A above who will not agree to so file the notice set forth in paragraph B above with the respondents and agree to conform his or her business practices to the provisions of the order.

E. Inform the persons described in paragraph A above that respondents are obligated by this order to discontinue dealing with or to terminate the use or engagement of persons who continue on their own the acts or practices prohibited by this order.

F. Institute a program of continuing surveillance adequate to reveal whether the business practices of each person described in paragraph A above conform to the requirements of this order.

G. Discontinue dealing with or terminate the use or engagement of any person described in paragraph A above, as revealed by the aforesaid program of surveillance or otherwise, who continues on his or her own any act or practice prohibited by this order.

IV

It is further ordered, That respondent Ricks-Ehrig, its successors and assigns, promptly deliver a copy of this order to each of its operating divisions and to each employee now or hereafter engaged in the preparation, creation or placing of advertising for Mayday or any other client engaged in a similar business activity; and that said respondent secure from each such person a signed statement acknowledging receipt of said order.

V

It is further ordered, That all parties respondent hereto shall maintain complete business records, which may be inspected by Commission staff members upon reasonable notice, to fully disclose the manner and form of their compliance with this order, including but not limited to the following records to be maintained by the Mayday respondents:

A. Records which disclose the facts upon which any job availability or placement claims, or other representations of the type described in Paragraph II(G) of this order are based; and

B. Records from which the validity of any job availability or

placement percentages or other representations of the type described in Paragraph II(G) or this order can be determined.

VI

Provided, however, That:

A. This order shall not apply to the operation of not-for-profit resident primary or secondary schools or institutions of higher education which offer for resident students at least a two-year program of accredited college level studies generally acceptable for credit toward a bachelor's degree.

B. Subparagraphs E, F, G and H of Paragraphs II and III of this order shall not apply to the advertising, offering for sale, sale or distribution of a course of study or instruction to a business or a governmental entity for use by their existing employees, provided such course is offered free of charge to said employees and respondents are not compensated for such course on the basis of the number of employees to whom such course is offered.

VII

It is further ordered, That the corporate respondents notify the Commission at least thirty (30) days prior to any proposed change in a 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 corporations which may affect compliance obligations arising out of the order.

In the event that respondent Mayday merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other person, said respondent shall require said successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this order; *provided,* That if said respondent wishes to present to the Commission any reasons why said order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

VIII

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and/or their affiliation with a new business or employment. Such notice shall include the respondents' current business address and a statement as to the nature of the business or

employment in which they are engaged, as well as a description of their duties and responsibilities.

IX

It is further ordered, That respondents shall, within sixty days after service upon them of this order, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order.

Commissioner Dole did not participate.

APPENDIX A

DISCLOSURE FORM

(NAME OF SCHOOL)

DROP OUT AND PLACEMENT RECORD FOR
(NAME OF COURSE) FOR THE PERIOD OF (DATE) TO (DATE)

1. TOTAL ENROLLEES [Number]
2. TOTAL WHO FAILED TO COMPLETE THE COURSE [Number]
3. PERCENTAGE WHO FAILED TO COMPLETE THE COURSE [%]
4. TOTAL NUMBER OF STUDENTS WHO OBTAINED EMPLOYMENT IN THE POSITION FOR WHICH THIS COURSE OF STUDY PREPARED THEM WITHIN THREE MONTHS OF TERMINATING THE COURSE [Number]
5. PERCENTAGE OF STUDENTS WHO OBTAINED EMPLOYMENT IN THE POSITION FOR WHICH THIS COURSE OF STUDY PREPARED THEM WITHIN THREE MONTHS OF TERMINATING THE COURSE [% of Enrollees]
6. PERCENTAGE OF GRADUATES WHO OBTAINED EMPLOYMENT IN THE POSITION FOR WHICH THIS COURSE OF STUDY TRAINED THEM WITHIN THREE MONTHS OF COMPLETING THE COURSE [% of grads]

775

Decision and Order

7. NUMBER AND PERCENTAGE OF
TOTAL ENROLLEES AND GRADU-
ATES WHO OBTAINED EMPLOY-
MENT IN THE FOLLOWING SALA-
RY RANGES:

	[Number] STUDENTS, WHICH IS [%] OF TOTAL ENROLLEES AND [%] OF TOTAL GRADUATES
Less than \$2.50 per hour	
\$2.50 - \$3.99 Per Hour	"
\$4.00 - \$5.50 Per Hour	"
\$5.51 - \$7.00 Per Hour	"
More than \$7.00 Per Hour	"

8. EMPLOYERS HIRING PERSONS
WHO GRADUATED FROM [NAME
OF COURSE] FROM [DATE] TO
[DATE] AS INVESTIGATORS AND
SECURITY PERSONNEL:

NAMES OF EMPLOYERS	TOTAL NUMBER OF GRADUATES HIRED
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APPENDIX B

"Base period" shall mean Mayday's most recent fiscal year ending at least three (3) months prior to the date on which respondents must begin to disseminate the necessary statistics with respect to the base period.

The three (3) month period immediately following the close of the base period shall be used by the Mayday respondents to monitor and record the employment success of all enrollees whose enrollment terminated during the base period. Said respondents may not include in the computation of statistics for the base period persons whose enrollment terminated during this three (3) month recordation period. Such persons will be included in the statistics for the next fiscal year.

On the first business day falling more than three (3) months after the end of Mayday's most recent fiscal year, the Mayday respondents shall begin to disseminate statistics for that base period. The Mayday respondents shall continue to distribute said statistics until the first

business day falling three (3) months after the end of Mayday's next fiscal year.

The following example describes how base periods will be utilized by the Mayday respondents.

Base period number one (1) will cover the first fiscal year ending after the effective date of this order. Therefore if the first fiscal year ending after the effective date of this order ends June 30, 1975, then from July 1, 1975 until October 1, 1975 respondents would monitor and record the employment experience of all enrollees whose enrollment terminated during the base period, July 1, 1974 to June 30, 1975. Respondents would begin disseminating these statistics on the first business day after October 1, 1975.

Base period number two (2) would begin July 1, 1975 and end June 30, 1976. During the next three months, the Mayday respondents would monitor and record the employment experience of all enrollees whose enrollment terminated during base period number two (2) and would begin disseminating these statistics on the first business day after October 1, 1976.

IN THE MATTER OF
RSR CORPORATION

Docket 8959. Interlocutory Order, Dec. 2, 1976

Commission rules on motions and counter motions with respect to material contained in complaint counsel's reply brief; accords *in camera* treatment to certain information on pp. 19-25 of the reply brief; and restores the brief to the public record.

Appearances

For the Commission: *K. Keith Thurman, Annthalia Lingos, and James C. Egan, Jr.*

For the respondent: *Robert L. Wald, Wald, Harkrader & Ross, Washington, D.C.; and Merrill L. Hartman, Hewett, Johnson, Swanson & Barbee, Dallas, Tex.*

ORDER DENYING MOTION TO STRIKE, ETC.

The initial decision of the administrative law judge in this matter was greeted with appeals by both sides. Pursuant to the Commission's Rules of Practice, each party was entitled to submit an Appeal Brief (in support of its appeal), an Answer Brief (in response to the other side's Appeal Brief), and a Reply Brief (in response to the other side's Answer Brief.) Each of these briefs, three for each side, three for each appeal, was duly prepared and submitted.

And there it might have ended, except that respondent subsequently filed a "Motion to Strike" pages 19-25 of complaint counsel's Reply Brief, arguing that it contained inaccurate and misleading statements. Complaint counsel struck back with the observation that respondent's Motion constituted nothing more than an unauthorized answer to their Reply Brief, expressly forbidden by Section 3.52(d) of the Rules of Practice. In case the Commission were inclined to consider this "Fourth Brief," however, complaint counsel appended a "Reply to Respondent's Unauthorized Answer." ("The Fifth Brief")

Not to be outdone, respondent thereupon filed for "Leave to Respond to 'Complaint Counsel's Reply to Respondent's Unauthorized Answer' ", appending thereto, "The Sixth Brief." Complaint counsel rejoined with what we might term, for ease of reference, their "Answer to Respondent's Answer to Complaint Counsel's Answer to Respondent's Unauthorized Answer to Complaint Counsel's Reply to Respondent's Answer to Complaint Counsel's Appeal Brief, etc." Therein complaint counsel observed that respondent had no right to "yet another unauthorized pleading" in this matter, and that the time for