

Complaint

IN THE MATTER OF

DRIVER TRAINING INSTITUTE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9060. Complaint, Oct. 3, 1975 — Decision, July 27, 1978*

This consent order, among other things, requires a Brooklyn, N.Y. truck and tractor-trailer training school to cease misrepresenting job opportunities, potential earnings, and employment demands for their graduates; and the effectiveness of their job placement activities. Further, firm is required to make timely, prescribed disclosures regarding cooling-off periods, cancellation rights, and job success of former trainees. Additionally, the order requires that firm establish a \$50,000 restitution fund to provide refunds to eligible former students, and maintain a surveillance program designed to ensure proper compliance with the terms of the order.

Appearances

For the Commission: *Alice T. Petizon, Jan F. Constantine and Shirley F. Sarna.*

For the respondents: *Spengler, Carson, Gubar, Churchill & Brodsky, New York City and Mirabelli & Guld, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Driver Training Institute, Inc., a corporation, Drivers Unlimited, Inc., a corporation, Ran-Lynn Rental and Service Corporation, a corporation, and Herbert Gruen, a/k/a Herbert Gruenstein, individually and as an officer of said corporations, and Sidney Spector, individually and as an officer of Driver Training Institute, Inc., hereinafter referred to as respondents, have violated the provisions of the Federal Trade Commission 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 Driver Training Institute, Inc., Drivers Unlimited, Inc., and Ran-Lynn Rental and Service Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal office and place of business located at 50 Greenpoint Ave., Brooklyn,

New York. The corporate address of Ran-Lynn Rental and Service Corporation is 310 Woods Ave., Oceanside, New York.

Respondent Herbert Gruen, a/k/a Herbert Gruenstein, is an individual and an officer of the corporate respondents. Respondent Sidney Spector is an individual and an officer of Driver Training Institute, Inc. Said individual respondents formulate, direct and control the policies, acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondents.

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

PAR. 2. Respondents are now and for some time last past have been engaged in the advertising, offering for sale and sale of training courses purporting to prepare graduates thereof for employment as truck or tractor-trailer drivers. Said courses consist of a series of lessons presented during a period of in-residence training at places designated by respondents.

PAR. 3. In the course and conduct of their business and for the purpose of inducing members of the general public to purchase their courses and for the purpose of obtaining leads or prospects for sale of such courses, respondents have disseminated, and caused the dissemination of, certain advertisements concerning the training courses by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, including, but not limited to, advertisements inserted in newspapers of interstate circulation, and by means of commercial announcements over television and radio transmitted across state lines, and by means of brochures, pamphlets and other promotional materials disseminated through the United States mail.

Respondents also maintain a training facility in the State of New Jersey and have at various times also maintained a sales office in that state.

Respondents transmit and receive, and cause to be transmitted and received, in the course of advertising, offering for sale, sale and distribution of such training courses, advertising and promotional materials, sales contracts, invoices, billing statements, checks, monies and other business papers and documents, to and from the several places of business operated by the respondents located as aforesaid and to prospective purchasers and purchasers thereof, located in various other States of the United States, other than the state of origination. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in

said training courses in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their aforesaid business for the purpose of obtaining leads or prospects for the sale of such training courses, and for the purpose of inducing members of the general public to purchase such training courses, respondents have made numerous statements and representations, both specific and implied, in newspaper advertisements, television and radio commercials, brochures and other printed materials and directly to said prospective students in the sales presentations made by their sales persons and other representatives, with respect to job opportunities and wages available to students who complete respondents' training courses, the placement assistance furnished to respondents' graduates in obtaining employment, and other matters. The following are typical and illustrative of the aforesaid statements and representations but not all inclusive thereof:

A. *Billboard Advertisements*

Big Steady Money

B. *Newspaper Advertisements*

The trucking industry NEEDS YOU. . . EARN BIG MONEY.

C. *Statements from Brochures*

No matter what their age, experience or background, all who come to DTI have one vital goal in common:

THE NEED
TO MAKE MORE
MONEY

. . . the industry's demand for professionally trained drivers continues to increase.

In general, trucking is one of the most highly unionized industries in the country. This is reflected in pay scales and job security for professionally trained drivers.

At this time, tractor-trailer drivers are in demand and earn the highest pay.

Demand is high and pay and job security are generally good in other trucking categories as well.

While DTI's primary function is professional training, we do offer effective job placement assistance to our graduates.

Each of these classifications (tractor-trailer; bus operator; large truck; small and medium trucks) has its own potential for a steady job at good pay.

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Job placement is part of the DTI service to graduates. This includes professional job counseling for all who complete their courses.

Although DTI cannot guarantee a job, it is a fact that a high percentage of our graduates have been placed through our efforts.

This is not surprising, because DTI's recognition in the industry as a truly fine training school for professional drivers helps to bring employers and our graduates together.

In earning the coveted DTI diploma-a valuable asset-you will be providing yourself with ready recognition in the industry as a safe, efficient and professional driver.

D. Television Advertisements

1

How would you like to make more than a good living? It's easy as a professional tractor-trailer driver. Let Driver Training Institute, one of America's oldest and largest licensed trucking schools show you how. You can keep your present job while you train. . .No previous trucking experience or high school diploma necessary. . .You get full job security in this highly unionized industry where no machine can replace you. Let Driver Training Institute help place you in the thousands of high paying jobs now waiting for you as a tractor-trailer driver. . .

2

Drive a tractor-trailer. These men do. This man now earns \$250 a week and more. This man earns over \$300 a week. They both have one thing in common. . .the need to make more money. If you want to make big money too, then call Driver Training Institute now. . .Act now. While there are still hundreds of high paying union jobs open. . .

3

Trailer drivers are in demand and do earn good money. The Driving Training Institute will train you in a very short time even while you're on your present job at their New York and Central New Jersey training centers. . .

4

FRIEND: Joey! I hear it's your last day on the job.

JOEY: Yeah! I start Monday as a tractor-trailer driver. Twice the money too.

FRIEND: How'd you swing that?

JOEY: With a course at DTI. Helped me get the job. Pretty good for a high school dropout, ha? . . .

ANNCR: You can train at the Driver Training Institutes in New York and Central New Jersey training centers. Better money and a brighter future in the highly unionized teamster industry. . .

E. Oral Statements by Sales Representatives

(a) There are a substantial number of positions as truck and tractor-trailer drivers readily available to respondents' graduates.

(b) Respondents' graduates experience little or no difficulty in obtaining employment as truck and tractor-trailer drivers.

(c) A substantial number or percentage of respondents' graduates earn salaries of approximately \$250 per week.

PAR. 5. By and through the use of the aforementioned statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents represent and have represented, directly or by implication, that:

1. There is a significant or substantial need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

2. Respondents had a reasonable basis from which to conclude that there is now or will be a significant or substantial need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

3. Thousands of high-paying jobs as truck and tractor-trailer drivers are readily available to graduates of respondents' training courses.

4. Respondents had a reasonable basis from which to conclude that there are thousands of high paying jobs as truck and tractor-trailer drivers readily available to graduates of respondents' training courses.

5. Graduates of respondents' training courses will experience little or no difficulty in securing employment in positions for which they have been trained.

6. The types of jobs available to graduates of respondents' training courses are steady, regular or secure in nature.

7. The types of jobs available to graduates of respondents' training courses generally pay salaries of approximately \$250 per week and a substantial number of the graduates of respondents' courses earn \$250 per week as truck and tractor-trailer drivers.

8. Respondents had a reasonable basis from which to conclude that a substantial number of graduates of their training courses would obtain jobs that paid approximately \$250 per week.

9. Respondents' placement service has been successful and effective in securing employment for all or most of their graduates as truck and tractor-trailer drivers.

10. Experience is not necessary or advantageous for graduates of respondents' courses of training to secure employment in high-paying, steady positions as truck and tractor-trailer drivers.

PAR. 6. In truth and in fact:

1. At the time it was so represented there was not a significant nor substantial need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

2. Respondents had no reasonable basis from which to conclude that there is now or will be a significant or substantial need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

3. Thousands of high-paying jobs as truck and tractor-trailer drivers are not readily available to graduates of respondents' training courses.

4. Respondents had no reasonable basis from which to conclude that there are thousands of high-paying jobs as truck and tractor-trailer drivers readily available to graduates of respondents' training courses.

5. Graduates of respondents' training courses have in many instances experienced substantial difficulty in securing employment in positions for which they have been trained.

6. The types of jobs available to graduates of respondents' courses are often not regular, secure nor steady in nature.

7. When jobs are available to graduates of respondents' training courses, these jobs generally pay salaries which are less than \$250 per week and a substantial number of respondents' graduates do not earn salaries of \$250 per week as truck and/or tractor-trailer drivers.

8. Respondents had no reasonable basis from which to conclude that a substantial number of graduates of their training courses would obtain jobs that paid approximately \$250 per week.

9. In most cases, respondents' placement service has not been successful nor effective in securing employment for their graduates as truck and tractor-trailer drivers.

10. In most instances experience is necessary or advantageous for graduates of respondents' courses of training to secure employment in high-paying, steady positions as truck and tractor-trailer drivers.

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

PAR. 7. Through the use of the aforesaid advertisements, television commercials, brochures, oral representations and otherwise, respondents have represented, directly or by implication, that there is or will be a significant or substantial need or demand for all or most of respondents' graduates in positions for which respondents train them; that there are thousands of high-paying jobs as truck and tractor-trailer drivers readily available to graduates of respondents' training courses; and that a substantial number of graduates of

respondents' training courses would obtain jobs that paid approximately \$250 per week. Respondents had at the time of said representations no reasonable basis adequate to support the representations. Therefore, the aforesaid acts and practices were, and are, unfair acts or practices.

PAR. 8. (a) In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have offered, and are now offering, for sale training courses purporting to prepare purchasers thereof for employment as truck drivers or tractor-trailer drivers without disclosing in advertising or through their sales representatives: (1) the recent percentage of persons who have completed the training course who were able to obtain the employment for which they were trained; (2) the employers that hired any such persons; (3) the initial salary any such persons 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 by prospective purchasers of respondents' training courses would indicate the possibility of securing future employment upon completion of the training courses, and the nature of such employment. Thus, respondents have failed to disclose a material fact which, if known to certain consumers, would be likely to affect their consideration of whether or not to purchase such training courses. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

(b) Respondents have offered, and are now offering, for sale training courses purporting to prepare purchasers thereof for employment as truck or tractor-trailer drivers without disclosing in advertising or through their sales representatives that:

1. Many employers of truck and tractor-trailer drivers prescribe a minimum age of twenty-one years of age for drivers;

2. Many employers of truck and tractor-trailer drivers give preferential consideration in hiring to driver-applicants with actual truck or tractor-trailer driving experience. Knowledge of such facts by prospective purchasers of respondents' training courses would indicate the possibility of securing future employment upon completion of the training courses, and the nature of such employment. Thus, respondents have failed to disclose material facts which, if known to certain consumers, would be likely to affect their consideration of whether or not to purchase such training courses. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 9. Through the aforesaid acts and practices, respondents have

induced persons to pay or to contract to pay to respondents substantial sums of money for courses of training which were of little use or value to said persons for the purposes of obtaining employment in the jobs for which respondents provided training. Respondents have received the said sums of money and have failed to offer refunds or to refund said sums of money or to rescind the contractual obligations of said persons.

Therefore, the aforesaid acts and practices, the receipt of and failure to offer to refund or to refund said sums of money, and the failure to rescind said contractual obligations, were, and are, unfair or deceptive acts or practices.

PAR. 10. 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 covering the same or similar subjects.

PAR. 11. The use by respondents of the aforesaid false, misleading, unfair or 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 respondents' training courses by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of considering settlement by the entry of a consent 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, 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 set forth 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 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondents Drivers Unlimited, Inc., and Ran-Lynn Rental and Service Corporation are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their principal office and place of business located at 50 Greenpoint Ave., Brooklyn, New York. Driver Training Institute, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 50 Greenpoint Ave., Brooklyn, New York.

Respondent Herbert Gruen, a/k/a Herbert Gruenstein, is an individual and an officer of the corporate respondents and also does business under the firm name of Driver Training Institute. Said individual respondent formulates, directs and controls the policies, acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondents.

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

I

It is ordered, That respondents Driver Training Institute, Inc., a corporation, Drivers Unlimited, Inc., a corporation, Ran-Lynn Rental and Service Corporation, a corporation, their successors and assigns and their officers, and Herbert Gruen, a/k/a Herbert Gruenstein, individually and as an officer of said corporate respondents and doing business under the firm name of Driver Training Institute, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchise or other device in connection with the advertising, promoting,

offering for sale, sale or distribution of courses of study, training or instruction in the field of truck driving or any other subject, trade or vocation in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

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

(a) There is a significant or substantial need or demand of any size or proportion for persons completing any of respondents' courses offered in the field of truck driving or any other field, or otherwise representing that opportunities for employment, or opportunities of any type or number are available to such persons, or that persons completing said courses will or may earn a specified amount of money, or otherwise representing by any means the prospective earnings of such persons, except as hereafter provided in Paragraph 5.

(b) The placement service offered by respondents has been successful in placing respondents' graduates in positions as truck and tractor-trailer drivers; or misrepresenting in any manner the effectiveness or success of respondents' placement service in obtaining employment for graduates of any course of training.

(c) Experience is not required or advantageous for employment as truck and tractor-trailer drivers; or misrepresenting in any manner the qualifications or requirements necessary to obtain employment as a truck or tractor-trailer driver.

2. Misrepresenting orally, visually, in writing or in any other manner, directly or by implication:

(a) The employment prospects of respondents' graduates or the ease with which respondents' graduates will attain employment.

(b) The types of jobs available to respondents' graduates, or that there will be job security or steady employment for respondents' graduates in positions for which respondents train such persons.

3. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any truck or tractor-trailer driver training course offered by respondents, the following information:

(a) The title "IMPORTANT INFORMATION" printed in ten (10) point boldface type across the top of the form.

(b) Paragraphs providing the following information:

(1) Many employers of truck or tractor-trailer drivers prescribe a minimum age of twenty-one (21) years of age for interstate drivers.

(2) Many employers of truck or tractor-trailer drivers give

preferential consideration in hiring to driver-applicants with actual truck or tractor-trailer driving experience.

4. Failing to keep adequate records which may be inspected by Commission staff members upon reasonable notice which substantiate the data and information required to be disclosed by Paragraph 5 of this order and prescribed in Appendix A.

5. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any course of instruction in the field of truck driving or any other subject, trade or vocation offered by respondents, the following information in the format prescribed in Appendix A and for a base period designated 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 at each school, location or facility;

(2) The placement rate, ratio or percentage for enrollees and graduates, and also the numbers upon which such rates, ratios or percentages are based, such rate or percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(3) The salary range of respondents' graduates as to the same graduates used to compute the placement percentage in (2) above;

(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 school newly established by respondents in a metropolitan area or county, whichever is larger, where they previously did not 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 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].

6. (a) Contracting for the sale of any course of instruction in the

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field of truck driving or any other subject, trade or vocation 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 in boldface type of a minimum size of ten (10) points, a statement in the following form:

You, the prospective enrollee, may cancel this transaction at any time prior to midnight of the seventh business day after the date of this transaction. See attached notice of cancellation form for an explanation of this right.

(b) Failing to furnish each prospective enrollee, at the time he signs the sales contract or otherwise agrees to enroll in a course of instruction in the field of truck driving or any other subject, trade or vocation offered by respondents, a complete form in duplicate, which shall be attached to the contract or agreement, and easily detachable, and which shall contain in ten (10) point boldface type the following information and statements:

NOTICE OF CANCELLATION

(enter date of transaction)
(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN SEVEN (7) 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 THIS TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL THIS TRANSACTION YOU MUST RETURN, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY BOOKS OR OTHER MATERIALS PROVIDED TO YOU UNDER THIS CONTRACT OF SALE. THESE MATERIALS MUST BE MAILED OR DELIVERED BY YOU TO (Address of Seller's place of business) WITHIN TWENTY (20) DAYS OF THE DATE YOU CANCEL THIS TRANSACTION. IF YOU FAIL TO RETURN THESE MATERIALS, THEN YOU WILL REMAIN LIABLE FOR PAYMENT OF THEIR REASONABLE COSTS.

TO CANCEL THIS TRANSACTION, 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), AT (Address of seller's place of business) NOT LATER THAN MIDNIGHT OF (Date).

I HEREBY CANCEL THIS TRANSACTION.

(Buyer's signature) (Date)

(c) Failing to orally inform each prospective enrollee of his right to cancel at the time he signs a contract or agreement for the sale of any course of instruction.

(d) Misrepresenting in any manner the prospective enrollee's right to cancel.

(e) Failing or refusing to honor any valid notice of cancellation by a prospective enrollee and within ten (10) business days after the receipt of such notice, to: (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by respondents; (iii) cancel and return any negotiable instrument executed by the prospective enrollee in connection with the contract or sale.

(f) During the cancellation period described herein, respondents shall not initiate contacts with such contracting persons other than contact permitted by this paragraph, and other than contact no earlier than five (5) days following the signing of the contract by the prospective student, which contact shall be limited solely to determining whether the prospective student has obtained a learners permit.

(g) This paragraph 6 shall not apply to any course of instruction whose purpose is avocational and which does not exceed seven (7) days in duration of less than full-time training and does not cost more than \$150.

7. Making any representations of any kind whatsoever, which are not already prescribed by other provisions of this order, in connection with the advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of truck driver training or any other course offered to the public in any field in or affecting commerce, for which respondents have no reasonable basis prior to the making or dissemination thereof.

8. In the event the Commission promulgates a final Trade Regulation Rule on Advertising, Disclosure, Cooling-Off and Refund Requirements Concerning Proprietary Vocational and Home Study Schools, then, upon the effective date of such Rule, such Trade Regulation Rule shall completely supersede and replace the provisions of this order set forth in Part I, Paragraphs 1(a), 4, 5 and 6, provided that if no provision of the Trade Regulation Rule relates in whole or in part to any matter covered by provisions of one of the aforesaid paragraphs of this order, then said provisions of said paragraph shall remain in full force and effect.

II

It is further ordered, That respondents:

(1) Deliver, or cause to be delivered, a copy of this order to all persons who now or in the future become franchisees of respondents for the operation of a vocational school program.

(2) Inform all franchisees that respondents are obligated to terminate those franchisees who continue the acts or practices prohibited by this order.

(3) Institute a program of continuing surveillance to reveal whether the business operations of each of said franchisees conform to the requirements of this order.

(4) Upon receiving actual knowledge from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating a violation of any provision of this order by any of respondents' present or future franchisees, respondents shall within 24 hours notify such franchisee by certified mail, return receipt requested, that such violation of this order has occurred ("Notice"), and that respondents will discontinue dealing with said franchisee upon receipt by respondents of actual knowledge of any further violations of this order by such franchisee. Respondents shall obtain from such franchisee written acknowledgement of receipt of such Notice which acknowledgement shall indicate the date of receipt of such "Notice." Upon receiving actual knowledge from any source (including but not limited to respondents' program of surveillance and representatives of the Federal Trade Commission) of facts indicating any violations of any provision of this order, following a franchisee's receipt of the aforesaid "Notice," respondents shall permanently terminate such franchisee.

III

It is further ordered, That:

1. For the purposes of Part III of this order, the following definitions shall apply:

(a) The term "Purchasers" shall mean those students who paid all or some portion of their own tuition to respondents and who did not have their tuition paid in full by any federal, state or local government agency or department, or any private business or other organization;

(b) The term "Relevant Time Period" shall mean the period commencing October 1, 1972 and continuing through December 31, 1976.

2. Respondents shall submit to the New York Office of the Federal Trade Commission, within five (5) days after the date this order is served on respondents (hereinafter "date of service"), a notarized affidavit, executed by respondent Herbert Gruen, to the effect that respondents have made or have caused to be made a good faith search of documents that pertain to purchasers of respondents' truck and tractor-trailer training courses of instruction, and that respondents, to the best of their knowledge, have previously or simultaneously with said affidavit submitted to the Commission the names of all such purchasers enrolled in said courses during the relevant time period.

3. Respondents or their designee shall make an inquiry in writing, on the ninetieth (90th) day after the date of service, in the language, manner and form shown in Appendices C and D, by first class mail with the envelope captioned "ADDRESS CORRECTION REQUESTED," accompanied by a self-addressed, postage prepaid envelope, to the home address of each former purchaser of respondents' truck or tractor-trailer courses whose name was submitted by respondents to the Commission. Counsel for respondents shall submit an affidavit of mailing, together with a postal certificate of mailing, to the New York Regional Office of the Federal Trade Commission within ninety-five (95) days after the date of service.

4. With respect to each purchaser whose mailed inquiry is returned undelivered, respondents or their designee shall have a duty to mail on the one hundred and thirtieth (130th) day after the date of service the same inquiry, by first class mail, to such purchaser's business address and to the address of such purchaser's nearest relatives as appear in personal information records, including but not limited to student or placement files, placement records and survey records maintained by respondents. Respondents shall submit to the New York Regional Office of the Federal Trade Commission, on or before the one hundred and thirty-fifth (135th) day after service, a notarized affidavit, executed by respondent Herbert Gruen, to the effect that respondents have made or have caused to be made, a good faith search of such personal information records as pertain to purchasers whose inquiries were returned undelivered, and that inquiries in writing, in the language, manner and form shown in Appendices C and D, were mailed to each such purchaser at his business address and the address of his nearest relative, as appear in his personal information records. Counsel for respondents shall submit an affidavit of mailing, together with a postal certificate of mailing, to the New York Regional Office of the

Federal Trade Commission within one hundred and thirty-five (135) days after the date of service.

5. Respondents shall use the information that they receive from the completed questionnaires solely for purposes of determining the eligibility of Purchasers who attended DTI during the Relevant Time Period for refunds.

6. "Eligible Class Member" means those purchasers who:

(a) Enrolled in respondents' truck and tractor-trailer training courses during the relevant time period; and

(b) (1) Completed respondents' truck and tractor-trailer courses; or

(2) Elected not to complete respondents' truck and tractor-trailer courses because of a lack of job demand or lack of employment qualifications such as minimum age or experience; and

(c) (1) Sought employment as a truck or tractor-trailer driver; or

(2) Elected not to seek employment as a truck or tractor-trailer driver because of a lack of job demand or lack of employment qualifications such as minimum age or experience; and

(d) (1) Did not attain employment as a truck or tractor-trailer driver; or

(2) Worked as a truck or tractor-trailer driver for twenty per cent (20%) of the time or less since terminating respondents' truck and tractor-trailer training courses.

7. Respondents shall make pro rata refund payments to each eligible class member based upon the proportion that total tuitions paid by or for all such eligible class members bear to the total amount available for refunds as provided in Part III of this order, except that eligible class members whose tuition was paid in part by a federal, state or local government agency or department, or by a private business or other organization, shall receive a pro rata refund based only on that amount of the eligible class members' tuition not paid by a federal, state or local government agency or department, a private business or other organization. In no event shall any eligible class member receive an amount greater than the tuition paid by such eligible class member.

8. Respondents shall ultimately provide a sum of no greater than fifty thousand dollars (\$50,000) solely to provide refunds under Part III of this order. No charges against this amount shall be made for administrative costs, which shall be absorbed by the respondents.

9. Respondents shall deposit, on or before the tenth business day after the date of service, the sum of fifty thousand dollars (\$50,000) into an escrow account at a banking institution to be agreed on between respondents and a member of the New York Office of the Federal Trade Commission. The principal amount of said bank

account shall be available only for the payment of refunds under the provisions of Part III of this order. Withdrawals and orders against this account shall, by agreement, be effective only when countersigned by the individual respondent, together with the Commission's representative at the New York Regional Office of the Federal Trade Commission.

10. Respondent shall submit to the New York Regional Office of the Federal Trade Commission a written request for advice as to whether their determination of who is an eligible class member complies with the terms of Part III of this order within one hundred and eighty (180) days after the date of service. Respondents shall submit simultaneously with their request all Appendix D questionnaires they have received as of the date said request for advice is filed. Respondents shall also, at this time, present any challenges to the factual accuracy of any Appendix D questionnaire, together with substantiating material, if any. The New York Regional Office of the Federal Trade Commission shall make the final determination of who is an eligible class member. The New York Regional Office of the Federal Trade Commission shall render its advice to respondents and return all Appendix D questionnaires to respondent within two hundred and five (205) days after the date of service.

11. On the two hundred and thirtieth (230th) day after the date of service, respondents or their designee shall deliver, or cause to be delivered, a refund check to each eligible class member, determined in accordance with Part III of this order. The amount of the refund check shall be derived in accordance with Part III of this order.

12. Each refund shall be accompanied by a letter in the language, manner and form shown in Appendix E; and a notice in the language, manner and form shown in Appendix F shall be sent by first class mail, with the sender's return address on the face of the envelope, to the last known home address of all persons whose returned questionnaires showed them to be ineligible for a refund pursuant to Part III of this order.

13. Respondents shall, on the two hundred and fifty-fifth (255th) day after the date of service, file with the New York Regional Office of the Federal Trade Commission a report in writing setting forth the manner and form in which they have complied with Part III of this order.

14. Respondents shall maintain records and documents which demonstrate that respondents have complied with Part III of this order for two (2) years after the date of service. Respondents shall return all completed Appendix D questionnaires to the New York

Regional Office of the Federal Trade Commission at the end of the two-year period.

15. It is agreed that should any duty required to be performed on a day certain under Part III of this order fall on other than a business day, the parties hereto may perform such duties on the next following business day.

IV

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. In addition, for a period of ten years from the effective date of this order, the individual respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this part shall not affect any other obligation arising under this order.

V

It is further ordered, That respondents maintain at all times in the future, complete business records relative to the manner and form of their continuing compliance with the above terms and provisions of this order.

VI

It is further ordered, That the respondents shall forthwith distribute a copy of this order to each operating division and to all of respondents' personnel now or hereafter engaged in the offering for sale, or sale of respondents' courses of study, training or instruction in the field of truck driving or any other subject, trade or vocation, and that respondents secure from each such person a signed statement acknowledging receipt of said order.

VII

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or corporations, the creation or

dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

VIII

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, except as otherwise provided in Part III.

APPENDIX A

(NAME OF SCHOOL)

IMPORTANT INFORMATION FOR PROSPECTIVE STUDENTS

Below is the dropout rate, job placement rate and starting salaries for students in the (name of course) between (date) and (date). Please read this page carefully before you decide whether or not to enroll in this school.

1. Total number of students: (number)
2. Students who failed to complete the course: (number) - (percent)
3. Students (whether graduating or not) who obtained employment as truck or tractor-trailer drivers: (number) - (percent)
4. Graduates who obtained employment as truck or tractor-trailer drivers: (number) - (percent)
5. Starting salaries of students who obtained employment as truck or tractor-trailer drivers

Less than \$120 per week:	(number) - (percent)
\$120 - \$160 per week:	(number) - (percent)
\$161 - \$200 per week:	(number) - (percent)
\$201 - \$250 per week:	(number) - (percent)
\$251 - \$300 per week:	(number) - (percent)
Over \$300 per week:	(number) - (percent)
6. Employers hiring graduates from the (name of course):

*Names of Employers**Number of Graduates Hired*

NOTE: In compiling the foregoing data, information was sought from all students (indicated by item 1 above) and responses were received from _____ students.

APPENDIX B

The first Base Period shall be the six (6) month period ending three (3) months prior to the effective date of this Order. Subsequent base periods shall be of six (6) months duration commencing on the next day following the termination of the prior base period. Base Periods shall be numbered consecutively beginning with the first base period (i.e. Base Period #1) as defined above.

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The three (3) month period immediately following the close of a base period shall be used by respondents to record and compile the information required by Paragraph 5 and Appendix A. In addition, respondents may not include in the computation of students for the base period any person whose enrollment terminated during the three (3) month recordation period. Such persons will be included in the statistics for the subsequent base period.

On the first business day falling more than three (3) months after the termination of the base period, respondents shall begin dissemination of that base period's statistics as required by this Order. Respondents shall continue to distribute said statistics until the first business day falling three (3) months after the termination of the next base period, at which time dissemination of the next set of base period statistics must begin.

The following example describes how the six (6) month base period and three (3) month recordation period will be utilized by the respondents:

Base Period 1 will cover that period which begins six months and 90 days prior to the effective date of the Order. If the Order is effective October 1, 1977, the base period will encompass the period January 1 to June 30, 1977. Respondents will then have from July 1 to September 30, 1977 to compile the data required by the Order. Respondents will disseminate the gathered data on October 1.

Base Period 2 would begin on July 1 and end December 31. From January 1 to March 31 respondents would compile the data required by the Order. This data is to be disseminated on the first business day after April 1.

APPENDIX C

(Name)
(Address)

Re: Eligibility for partial reimbursement to certain former students of
Driver Training Institute.

Dear (Name):

In settlement of a proceeding brought by the United States Federal Trade Commission, Driver Training Institute has agreed to a consent order. Under that order, some students may be eligible for a partial refund of tuition, if they meet certain requirements for eligibility.

The purpose of the enclosed questionnaire is to determine whether or not you are eligible for a partial reimbursement of tuition. Of course, you are under no obligation to send in this questionnaire, but you *must* return this questionnaire if you want to have your eligibility determined.

If you complete and return this questionnaire, the information in it will be used by Driver Training Institute and the Federal Trade Commission solely to determine your eligibility for a refund. (However, disclosure of the information may also be made to a congressman in the event a congressman inquires about the information *at your request*.)

You may already have received and sent in other questionnaires to the Federal Trade Commission or Driver Training Institute. These questionnaires were used in preparation for the adjudicative proceeding. Now that this proceeding has been settled, this questionnaire seeks *different* information, information which is necessary to determine your eligibility.

DIRECTIONS: Please mark or fill in the appropriate spaces on the questionnaire enclosed, and return it in the enclosed stamped addressed envelope. It is suggested that you fill out and mail in this questionnaire as soon as possible, but in any event no

later than (date which represents the one hundred and sixtieth day from the date of service). If you should misplace the envelope provided, please mail your questionnaire to the (Name and address of party on return envelope).

You must follow the directions and should answer all questions which apply to you *completely and truthfully*, to the best of your knowledge. Questionnaires which are incomplete or improperly filled out could result in the loss of eligibility.

APPENDIX D

ELIGIBILITY QUESTIONNAIRE

RE: Your attendance at Driver Training Institute, Brooklyn, New York.

1. Did you enroll in a truck or tractor-trailer training course at Driver Training Institute (DTI)? (CHECK ONE) YES NO

2. Did you complete the course? (CHECK ONE) YES . (SKIP TO QUESTION 4) NO

3. Please give the *most important* reason why you did *not* complete the course. (MARK ONLY ONE BOX)

- a. I took the course for advancement in my job and not for the purpose of seeking a job as a truck or tractor-trailer driver . . .
- b. I decided I did not want a job driving a truck or a tractor-trailer . . .
- c. I preferred a job in another field (such as a salesman or mechanic) . . .
- d. I decided I would not be able to find a job as a truck or tractor-trailer driver because I did not have any truck or tractor-trailer driving experience . . .
- e. I decided that I would not be able to find a job as a truck or tractor-trailer driver because of a lack of demand for drivers . . .
- f. I decided I would not be able to find a job as a truck or tractor-trailer driver because I was too young . . .
- g. I married, started a family or discontinued my training for other personal reasons such as illness or relocation. . .
- h. I was drafted or enlisted in the military service. . .
- i. I went to college or other schooling. . .
- j. Other (PLEASE DESCRIBE). . .

4. Did you make any effort to seek a job as a truck or tractor-trailer driver? (CHECK ONE) YES. (SKIP TO QUESTION 6). . . NO. . .

5. Please give the *most important* reason why you did *not* seek a job as a truck or tractor-trailer driver. (MARK ONLY ONE BOX)

- a. I took the course for advancement in my job and not for the purpose of seeking a job as a truck or tractor-trailer driver. . .
- b. I decided I did not want a job driving a truck or a tractor-trailer. . .
- c. I preferred a job in another field (such as a salesman or mechanic). . .
- d. I decided I would not be able to find a job as a truck or tractor-trailer driver because I did not have any truck or tractor-trailer driving experience. . .
- e. I decided that I would not be able to find a job as a truck or tractor-trailer driver because of a lack of demand for drivers. . .
- f. I decided I would not be able to find a job as a truck or tractor-trailer driver because I was too young. . .
- g. I married, started a family or discontinued my training for other personal reasons such as illness or relocation. . .
- h. I was drafted or enlisted in the military service. . .

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- i. I went to college or other schooling. . .
- j. Other (PLEASE DESCRIBE). . .
6. Did you ever get a job as a truck or tractor-trailer driver? (CHECK ONE)
YES. . . NO. (SKIP TO QUESTION 8). . .
7. Since leaving Driver Training Institute, about how much time have you been employed as a truck or tractor-trailer driver? (CHECK ONE) 20% of the time 80% of the time 50% of the time 100% of the time
8. How much was your tuition AMOUNT \$ _____ How much of your tuition did you pay? AMOUNT \$ _____
9. Did any federal, state or local government agency or department or any private business or other organization pay any of the tuition for the course in which you enrolled? (CHECK ONE) YES NO
10. How much of your tuition has paid by such governmental agency or private business or organization? AMOUNT \$ _____
11. Have you ever received a refund of any tuition money from DTI? (CHECK ONE) YES NO
12. How much was the refund? AMOUNT \$ _____
13. How old were you when you enrolled in DTI? _____

Please attach to this form copies of any documents which show that you paid an amount of money for any course of instruction offered by Driver Training Institute. If you cannot provide such documents, your eligibility to receive reimbursement will not be affected.

WARNING: It is a federal crime for anyone to knowingly and willfully make a false, fictitious or fraudulent statement or representation in any matter within the jurisdiction of any department or agency of the United States. 18 U.S.C. §1001.

Signature

Date

Print Name Here

APPENDIX E

(Name)

(Address)

Dear (Name):

Pursuant to a consent order issued by the Federal Trade Commission, Driver Training Institute has agreed to make (percentage) per cent refund of tuition payments to certain students who had enrolled in truck and tractor-trailer training courses offered by Driver Training Institute.

The order of the Commission contains the provisions identifying the class of persons eligible for refunds, and the procedures for making refunds. (You may obtain a copy of the order without charge by writing to the Federal Trade Commission, Public Reference Branch, Room 130, Washington, D.C. 20580. Refer to Driver Training Institute, Inc., Docket No. 9060.)

In accordance with the provisions of the order, it has been determined that you are entitled to a refund of \$ _____. A check for this amount is enclosed.

DRIVER TRAINING INSTITUTE

By

Herbert Gruen

APPENDIX F

IMPORTANT NOTICE

Pursuant to an order of the Federal Trade Commission issued on July 25, 1978, Driver Training Institute agreed to make partial reimbursements of tuition to certain students who had enrolled in Driver Training Institute's truck and tractor-trailer training courses. The order of the Commission contains provisions identifying the class of persons eligible for reimbursement and the procedures for making reimbursements.

In accordance with the provisions of the order, it has been determined, based upon your responses to the "Eligibility Questionnaire," that you are not eligible for reimbursement.

The order specified that the class of students entitled to reimbursement was limited to those students who meet *all* of the following tests:

1. Enrolled in Driver Training Institute's courses during the period from October 1, 1972 to December 31, 1976; and
2. Did not have his course tuition paid in full by a federal, state or local government agency or department, or a private business or other organization; and
3. Completed the training course, or elected not to complete the course because of a lack of job demand or a lack of employment qualifications such as minimum age or experience; and
4. Sought employment as a truck or tractor-trailer driver, or elected not to seek employment because of a lack of job demand or lack of employment qualifications such as minimum age or experience; and
5. Did not get a job as a truck or tractor-trailer driver, or was employed as a truck or tractor-trailer driver for 20% or less of the time since leaving DTI.

You may obtain a copy of the order without charge by writing to the Federal Trade Commission, Public Reference Branch, Room 130, Washington, D.C. 20580. Refer to Driver Training Institute, Inc., Docket No. 9060.

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IN THE MATTER OF

[16 CFR 461]; CHILDREN'S ADVERTISING. 43 FR 17967
(1978)

TRR No. 215-60. Interlocutory Order, July 31, 1978

This order denies the petition of Chocolate Manufacturers Association for suspension or narrowing of the instant rulemaking proceeding.

TRR No. 215-60 ORDER DENYING CHOCOLATE
MANUFACTURER'S PETITION

The Chocolate Manufacturers Association ("CMA") has petitioned to suspend the rulemaking proceeding, or, in the alternative, to delete the proposals and issues turning on the safety of sugar-containing foods. CMA contends that the issue of sugar safety is properly a matter for the FDA and that the Commission should defer action on this issue pending the outcome of an impending FDA reevaluation of the safety of sugar. This petition has been certified to the Commission by the Presiding Officer. See Order No. 5.

CMA misapprehends the thrust of the Commission's rulemaking proposal. The central issue is whether television advertising directed towards children, including the advertising of products containing sugar, is unfair or deceptive. While issues of the health effects of sugared products will be considered, there will be no attempt made to decide whether sugar, as such, is a safe food or food additive. As petitioner correctly points out, such a determination is the province of the FDA. However, the fact that sugar is currently "generally recognized as safe" ("GRAS") does not mean that it has no adverse impact on health at any level of consumption or regardless of the manner in which it is consumed. To the extent that television advertising affects the consumption pattern of sugar by children, health issues connected with such consumption are properly subject to Commission examination. Similarly, merely because a product is composed entirely of ingredients that are GRAS does not mean that the product cannot be advertised in an unfair or deceptive manner. See, *National Bakers Servs., Inc. v. FTC*, 329 F.2d 365 (7th Cir. 1964); *ITT Continental Baking Co. v. FTC*, 532 F.2d 207 (2d Cir. 1976).

The Commission clearly has jurisdiction over food advertising, both under its general mandate to prohibit "unfair or deceptive acts or practices," 15 U.S.C. 45(a)(2), and under its specific authority to prohibit false advertising of foods, drugs, and cosmetics, 15 U.S.C. 52. It is also clear that as between the Commission and the FDA, the Commission has principal responsibility over food advertising. See