

Complaint

IN THE MATTER OF

**NEW ENGLAND TRACTOR TRAILER
TRAINING SCHOOL OF MASSACHUSETTS,
INC.; NEW ENGLAND TRACTOR TRAILER
TRAINING SCHOOL OF CONNECTICUT, INC.;
AND MARK GREENBERG**

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3916; File No. 982 3040

Complaint, January 10, 2000--Decision, January 10, 2000

This consent order prohibits respondent New England Tractor Trailer Training School of Massachusetts, Inc. ("NETTTS") from making future misrepresentations concerning the results or benefits of NETTTS's training programs or career services. Respondent is also required to disclose its placement rates if they make any representation about the employment or placement rates of graduates from their program. This disclosure is required in writing before a prospective student is given enrollment papers or forms. Respondent must also disclose their licensing test pass rates if they make any statement about any test passing rates by graduates of their program, or before any prospective student is given any enrollment papers or forms.

Participants

For the Commission: *Heather A. Hipsley, Carol Jennings,
and Elaine D. Kolish.*

For the Respondents: *Ann Plaza Collier and Judith Oldham,
Shannon, Rill & Scott.*

COMPLAINT

The Federal Trade Commission, having reason to believe that New England Tractor Trailer Training School of Massachusetts, Inc. and New England Tractor Trailer Training School of

Complaint

Connecticut, Inc., corporations, and Mark Greenberg, individually and as an officer and director of the corporations (“respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent New England Tractor Trailer Training School of Massachusetts, Inc., is a Massachusetts corporation with its principal office or place of business at 1050 Hancock Street, Quincy, Massachusetts 02169.

2. Respondent New England Tractor Trailer Training School of Connecticut, Inc., is a Connecticut corporation with its principal office or place of business at 32 Field Road, Somers, Connecticut 06071.

3. Respondent Mark Greenberg is an officer and director of the corporate respondents. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporations, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of New England Tractor Trailer Training School of Massachusetts, Inc.

4. Respondents are engaged, and have been engaged, in the sale and offering for sale of vocational training programs to the public, including but not limited to driver training for tractor trailer and heavy straight trucks. Respondents’ truck driver training programs typically last from one to four weeks and cost from \$1700 to \$3600.

5. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

Complaint

6. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for their training programs. These advertisements and promotional materials contain the following statements:

- a. "We deliver careers. That means plenty of career opportunities for those with professional training and licensed know-how in heavy truck operation. NETTTS [New England Tractor Trailer Training School] will prepare you to take your state's test for a Commercial Driver's License that can be your start in an independent and rewarding career moving America's goods. With your license, you can put a great career in gear and go."
- b. "The trucking industry needs at least 450,000 drivers this year. . . . You could be one of them."
- c. "Get your Commercial Driver's License and get on the road to a new job."
- d. "You can enter the NETTTS program for tractor trailer drivers or commercial heavy straight truck drivers if you have:
 - A high school diploma, or a GED (high school equivalent certificate), or you pass an approved ability-to-benefit test.
 - A valid driver's license (from any state).
 - Ability to pass a U.S. Department of Transportation physical."
- e. "New England Tractor Trailer Training School has been around for thirty years. Simply put, nobody has the experience we do in preparing people for a career in trucking."

Complaint

- f. "Learn to drive the big rigs in just 3 short weeks."
- g. "1 week Commercial Drivers License training."
- h. "When you graduate from a CDL A program, you *will be ready* for a career as a professional tractor trailer driver." (Emphasis in original.)
- i. "We have earned a reputation for training excellence by combining the necessary classroom training with hands-on knowledge and operating practice you need to take and pass your state's Commercial Driver's License (CDL) test."
- j. "Our experienced instructors can help you become a professional driver fully prepared to earn a good living hauling America's products."
- k. "With our comprehensive behind-the-wheel training and career placement assistance we can have you licensed and on the road."
- l. "You will practice on NETTTS' own big rigs. We have over 150 tractors and trailers spread among our five campuses in the northeastern United States."
- m. "NETTTS puts students in touch with trucking companies that reimburse students' tuition."
- n. "And because you live in the Northeast, you won't have to move or give up your home life to earn it."
- o. "84% of All Graduates Requested Placement. 81% Requesting Placement Are Placed. The 16% of our graduates not requesting placement are obtaining their licenses to upgrade their positions with their current employers or have already acquired employment on their own."

Complaint

7. During interviews with prospective students, employees of respondents have made the following oral representations to persuade prospective students to enroll in their programs:

- a. Over 85% of our students are hired before they get their CDL licenses.
- b. 95% of NETTTS' graduates pass the CDL test.
- c. NETTTS' placement service places 85% of NETTTS' graduates in truck driving jobs.
- d. NETTTS' placement service places nearly all of NETTTS' graduates in truck driving jobs.
- e. Local jobs are available to NETTTS' graduates.

8. Through the means described in Paragraphs 6 and 7, respondents have represented, expressly or by implication, that:

- a. NETTTS' placement services place a high percentage of NETTTS graduates in jobs as truck drivers.
- b. All or virtually all of NETTTS' graduates obtain employment as truck drivers.
- c. A high percentage of NETTTS' graduates will be able to obtain local truck driving jobs.
- d. Ninety-five percent (95%) of NETTTS' graduates pass the CDL test.
- e. A high percentage of NETTTS' graduates pass the CDL test the first time they take it.

Complaint

- f. Students who complete NETTTS' training program will receive adequate instruction, including a sufficient opportunity for practice driving, to enable them to pass the CDL test.
 - g. Many NETTTS' graduates are reimbursed the cost of their tuition by trucking companies that employ them.
 - h. NETTTS admits only students who possess a high school diploma or equivalency or pass an admissions test, and are otherwise qualified to complete the training program and to obtain a Commercial Drivers License (CDL).
9. In truth and in fact:
- a. NETTTS' placement services do not place a high percentage of NETTTS' graduates in jobs as truck drivers.
 - b. Not all of NETTTS' graduates are able to obtain employment as truck drivers.
 - c. A significant percentage of NETTTS' graduates are not able to obtain local truck driving jobs.
 - d. The rate of passing of the CDL test by graduates of the NETTTS' program is substantially less than 95%.
 - e. A significant percentage of NETTTS' graduates do not pass the CDL test the first time they take it.
 - f. In numerous instances, students who complete NETTTS' training program do not receive adequate instruction, including a sufficient opportunity for practice driving, to enable them to pass the CDL test.

Complaint

- g. A significant number of NETTTS' graduates are not reimbursed the cost of their tuition by trucking companies that employ them.
- h. NETTTS admitted some students who did not meet its own admissions criteria and were unqualified to complete the training program and to obtain a CDL.

Therefore, the representations set forth in Paragraph 8 were, and are, false or misleading.

10. Through the means described in Paragraphs 6 and 7, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 8, at the time the representations were made.

11. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 8, at the time the representations were made. Therefore, the representation set forth in Paragraph 10 was, and is, false or misleading.

12. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this tenth day of January, 2000, has issued this complaint against respondents.

By the Commission, Commissioner Leary not participating.

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 complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act, and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by the respondents of all the jurisdictional facts set forth in the draft 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 violated the said Act, and that a 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 (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent New England Tractor Trailer Training School of Massachusetts, Inc., is a Massachusetts corporation with its headquarters located at 1050 Hancock Street, Quincy, Massachusetts.

Decision and Order

2. Respondent New England Tractor Trailer Training School of Connecticut, Inc., is a Connecticut corporation with its headquarters located at 32 Field Road, Somers, Connecticut 06071.
3. Respondent Mark Greenberg is an officer and director of the corporate respondents. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporations. His principal office or place of business is the same as that of New England Tractor Trailer Training School of Massachusetts, Inc.
4. 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**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

1. "Training program" shall mean any and all training or instructional course or program of whatever type, duration, or medium used.
2. "Clearly and prominently" shall mean as follows:
 - A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video

Decision and Order

portions of the advertisement. *Provided, however,* that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the advertisement is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

- B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multi-page documents, the disclosure shall appear on the cover or first page.
 - C. In oral communications, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.
 - D. In all cases, the disclosure must be in understandable language and syntax, and in the same language as the representation that triggers the disclosure, and nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used.
3. Unless otherwise specified, “respondents” shall mean New England Tractor Trailer Training School of Massachusetts, Inc., and New England Tractor Trailer Training School of Connecticut, Inc., corporations,

Decision and Order

their successors and assigns and their officers; Mark Greenberg, individually and as an officer and director of the corporations; and each of the above's agents, representatives, and employees.

4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale, of any training program, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about:

- A. the job placement rate or record of employment success of graduates of their training programs;
- B. the opportunities for employment, or employment demand, for graduates of their training programs;
- C. the percent, number or portion of graduates of their training programs who pass qualifying tests, including, but not limited to, the CDL test;
- D. the adequacy of their training programs to prepare graduates to pass qualifying tests, including, but not limited to, the CDL test;
- E. the placement assistance that respondents provide to graduates of their training programs;
- F. reimbursement of the cost of tuition by employers of graduates of respondents' training programs;

Decision and Order

- G. the equipment used in their training programs;
- H. the experience and qualifications of their instructors;
- I. the amount of student driving time included in their training programs;
- J. the terms and conditions of admittance to or completion of respondents' training programs; and
- K. any other representation regarding the results or benefits of respondents' training programs or career services;

unless the representation is true and, at the time it is made, respondents possess and rely upon competent and reliable evidence that substantiates the representation.

II.**PLACEMENT RATES DISCLOSURE**

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, or sale of any training program, in or affecting commerce,

- A. shall not make any representation, in any manner, expressly or by implication, about the number of graduates of respondents' training programs, or similar types of training programs, who obtain employment, or the rate of placement or employment of such graduates, or use any terms (including, but not limited to, *many* or *most*) that purport to quantify the likelihood that such graduates will obtain employment, unless respondents disclose, clearly and prominently, and in close proximity to the representation,

Decision and Order

respondents' "Placement Rates," as calculated pursuant to Appendix A; and

- B. shall provide, during the initial discussion of enrollment with any prospective purchaser of respondents' training programs and prior to the time the enrollment agreement and other enrollment forms are presented to the prospective student, a copy of the Placement Rates Disclosure Statement (to be retained by the prospective purchaser), set forth in Appendix B. The Placement Rates Disclosure Statement shall be set forth in the same format and type size as set forth in Appendix B. The Disclosure Statement shall be set forth in a separate document and shall contain no other information in the same document, except that the Test Pass Rates Disclosure Statement, required by Part III of this Order, may be included in the same document. Respondents shall hand the Disclosure Statement to the prospective purchaser separately from other documents and shall, in immediate proximity thereto, clearly and prominently, make the following oral disclosure, or a substantially similar statement:

Here are the job placement rates for the programs at our school.

If test pass rates are included on the Disclosure Statement, the following oral disclosure, or a substantially similar statement, shall be substituted:

Here are the job placement rates and CDL [or other] test pass rate for the programs at our school.

III.**TEST PASS RATES DISCLOSURE**

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, or sale of any training program, in or affecting commerce,

- A. shall not make any representation, in any manner, expressly or by implication, about the rate of passing of any test, including but not limited to the CDL test, by graduates of their training programs, or of similar types of training programs, unless respondents disclose, clearly and prominently, and in close proximity to the representation, respondents' "Test Pass Rates," as calculated pursuant to Appendix C; and
- B. shall provide, during the initial discussion of enrollment with any prospective purchaser of respondents' training programs and prior to the time the enrollment agreement and other enrollment forms are presented to the prospective student, a copy of the Test Pass Rates Disclosure Statement (to be retained by the prospective purchaser), set forth in Appendix D. The Test Past Rates Disclosure Statement shall be set forth in a separate document in the same format and type size as set forth in Appendix D, and shall contain no other information in the same document, except that the Placement Rates Disclosure Statement, required by Part II of this Order, may be included in the same document. Respondents shall hand the Disclosure Statement to the prospective purchaser separately from other documents and shall, in immediate proximity thereto, clearly and prominently, make the following oral disclosure, or a substantially similar statement:

Decision and Order

Here is the CDL [or other] test pass rate for the programs at our school.

If placement rates are included on the Disclosure Statement, the following oral disclosure, or a substantially similar statement, shall be substituted:

Here are the job placement rates and CDL [or other] test pass rate for the programs at our school.

IV.**RECORD KEEPING**

IT IS FURTHER ORDERED that respondents New England Tractor Trailer Training School of Massachusetts, Inc., and New England Tractor Trailer Training School of Connecticut, Inc., and their successors and assigns, and respondent Mark Greenberg shall, for five (5) years after the last date of dissemination of any representation covered by this Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying, business records demonstrating their compliance with the terms and provisions of this Order, including but not limited to:

- A. all advertisements and promotional materials, sales or admissions interview scripts or training manuals, catalogs, or other marketing materials;
- B. all materials that were relied upon in disseminating any representation covered by this Order; and
- C. all evidence in their possession or control that contradicts, qualifies, or calls into question the representation, or the basis relied upon for the representation, including complaints, and the responses

Decision and Order

thereto, and other communications with consumers or with governmental or consumer protection organizations.

V.**DISTRIBUTION OF ORDER**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of issuance of this Order, respondents New England Tractor Trailer Training School of Massachusetts, Inc., and New England Tractor Trailer Training School of Connecticut, Inc., and their successors and assigns, and respondent Mark Greenberg shall:

- A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from each officer and director, each individual serving in a management capacity who has any responsibilities with respect to the subject matter of this Order, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, recruiters, and admissions representatives (whether designated as employees, consultants, independent contractors or otherwise), as follows: (1) to current personnel, within thirty (30) days after the date of service of this Order and (2) to future personnel immediately after the person assumes such position or responsibilities;
- B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Paragraph A. of this Part.

Decision and Order

VI.**NOTIFICATION BY CORPORATE RESPONDENTS**

IT IS FURTHER ORDERED that respondents New England Tractor Trailer Training School of Massachusetts, Inc., and New England Tractor Trailer Training School of Connecticut, Inc., and their successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporations that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation(s) about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VII.**NOTIFICATION BY INDIVIDUAL RESPONDENT**

IT IS FURTHER ORDERED that respondent Mark Greenberg, for a period of five (5) years from the date of issuance of this Order, shall notify the Commission of each affiliation with a new business or employment the activities of which include the advertising, promotion, sale, or offering for sale of vocational training programs, or of his affiliation with a new business or employment in which his duties and responsibilities involve the

Decision and Order

advertising, promotion, sale, or offering for sale of vocational training programs. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VIII.**MONITORING COMPLIANCE OF SALES PERSONNEL**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of issuance of this Order, respondents New England Tractor Trailer Training School of Massachusetts, Inc., and New England Tractor Trailer Training School of Connecticut, Inc., and their successors and assigns, and respondent Mark Greenberg, in connection with any business that provides training programs, shall:

- A. Take reasonable steps sufficient to monitor and ensure that all employees and/or independent contractors engaged in admissions, recruiting, sales or other customer service functions comply with Parts I, II, and III of this Order. Such steps shall include adequate monitoring of admission interviews, recruiting activity, sales presentations or other contacts with prospective purchasers, and shall also include, at a minimum, the following: (1) listening, on a regular basis, to the oral representations made by persons engaged in admissions, recruiting, sales or other customer service functions; (2) establishing a procedure for receiving and responding to consumer complaints; and (3) ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved; *provided*, that this Paragraph does not authorize or

Decision and Order

require the defendants to take any steps that violate any federal, state or local laws;

- B. Investigate promptly and fully any consumer complaint received by any business to which this Part applies; and
- C. Take corrective action with respect to any admission representative, recruiter, or sales person who is not complying with this Order, which action may include training, disciplining, and/or terminating such person.

IX.**COMPLIANCE REPORT**

IT IS FURTHER ORDERED that respondents New England Tractor Trailer Training School of Massachusetts, Inc., and New England Tractor Trailer Training School of Connecticut, Inc., and their successors and assigns, and respondent Mark Greenberg, shall file with the Commission, according to the following schedule, written reports setting forth in detail the manner and form in which they have complied with this Order:

- A. The first report shall be filed within one hundred and twenty (120) days after the date of service of this Order;
- B. The second report shall be filed within one (1) year after the date of service of this Order; and
- C. Subsequent reports shall be filed at such other times as the Federal Trade Commission may require.

Decision and Order

X.**MONITORING OF COMPLIANCE BY COMMISSION**

IT IS FURTHER ORDERED that the Commission is authorized to use investigators posing as consumers or prospective consumers of respondents, without the necessity of identification or prior notice.

XI.**SUNSET OF ORDER**

This Order will terminate on January 10, 2020, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this Order that terminates in less than twenty (20) years;
- B. This Order's application to any respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Part as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the

Decision and Order

later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission, Commissioner Leary not participating.

APPENDIX A**CALCULATION OF PLACEMENT RATES**

“PLACEMENT RATES” shall be expressed as a percentage, calculated by dividing (a) the number of persons who graduated, during the time period, who were employed in jobs for which the program trained them by (b) the number of persons who graduated, during the time period, who were available for placement.

The time period shall be the period disclosed on the form set forth in Appendix B, in the heading “STUDENTS GRADUATING BETWEEN _____ AND _____,” and shall be at least a twelve month period, and no more than a twenty-four month period. Respondents shall use the time period covered by the school’s most recent report to the school’s accrediting agency or the state licensure body. If the school is not accredited or licensed, respondents shall use the time periods specified for any such reports by the appropriate accrediting agency or licensing body.

For purposes of the disclosure required by Part II.A of this Order, the placement rates disclosed shall be for the same program as that referred to in the representation that triggers the disclosure.

Decision and Order

For purposes of the disclosure required by Part II.B of this Order, the placement rates must be disclosed separately for all certificate programs offered by the school at which the disclosure is made.

APPENDIX B

PLACEMENT RATES DISCLOSURE STATEMENT

<u>PLACEMENT RATES:</u> <u>PERCENTAGE OF GRADUATES WHO OBTAINED</u> <u>EMPLOYMENT</u>	
STUDENTS GRADUATING BETWEEN _____ AND _____	
PROGRAM	PLACEMENT RATE

Decision and Order

APPENDIX C

“TEST PASS RATE” shall be expressed as a percentage, calculated by dividing (a) the number of persons who graduated, during the time period, who passed the test by (b) the number of persons who graduated, during the time period, who took the test.

The time period shall be as defined in Appendix A.

For purposes of the disclosure required by Part III.A of this Order, the test pass rate disclosed shall be for the same program as that referred to in the representation that triggers the disclosure.

For purposes of the disclosure required by Part III.B of this Order, the test pass rates must be disclosed separately for all certificate programs offered by the school at which the disclosure is made.

Decision and Order

APPENDIX D**TEST PASS RATES DISCLOSURE STATEMENT**

<u>TEST PASS RATES*</u>		
STUDENTS GRADUATING BETWEEN _____ AND _____		
TEST	Number Taking Test	Percent Passing Test

* Graduates may have had to take the test more than once before passing.

Analysis to Aid Public Comment

**ANALYSIS OF PROPOSED CONSENT ORDER
TO AID PUBLIC COMMENT**

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from respondents New England Tractor Trailer Training School of Massachusetts, Inc., New England Tractor Trailer Training School of Connecticut, Inc., and Mark Greenberg, individually and as president of the corporate respondents.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns practices related to the advertising, promotion, and sale of vocational training programs, including driver training for tractor trailer and heavy straight trucks. The Commission's complaint charges that respondents violated the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, by making numerous representations that were false and for which they lacked a reasonable basis of substantiation. These representations concerned: employment and/or placement rates for graduates of respondents' program; the availability of local truck driving jobs; the rate of passing the CDL test by graduates of respondents' program; the number of graduates of the program who pass the CDL test the first time they take it; the adequacy of training to prepare students for the Commercial Drivers License (CDL) test; the extent to which future employers will reimburse the cost of tuition; and the admissions criteria for respondents' program.

Analysis to Aid Public Comment

Part I of the proposed consent order prohibits future misrepresentations concerning the above, as well as other results or benefits of respondents' training programs or career services.

Part II of the proposed order requires a disclosure of respondents' placement rates. This disclosure is triggered by any representations about the rate of employment or placement of graduates of respondents' program. In addition, this disclosure is required to be given to prospective students, in writing, prior to the time that students are presented with the enrollment agreement and other enrollment forms. Appendices A and B to the proposed order set forth the prescribed manner of calculation of placement rates and the form in which the information will be given to prospective students.

Part III of the proposed order requires disclosure of the licensing test pass rates for graduates of respondents' program. This disclosure is triggered by any representations about the rate of passing any test, including but not limited to the CDL test, by graduates of respondents' program. In addition, this disclosure is required to be given to prospective students, in writing, prior to the time that students are presented with the enrollment agreement and other enrollment forms. Appendices C and D to the proposed order set forth the prescribed manner of calculation of test pass rates and the form in which the information will be given to prospective students.

Part IV of the proposed order is a record keeping provision that requires the respondents to maintain certain records for five (5) years after the last date of dissemination of any representation covered by the consent order. These records include: (1) all advertisements and promotional materials, sales or admissions interview scripts or training manuals, catalogs, and other marketing materials; (2) all materials relied upon in making any representation covered by the order; and (3) all evidence in respondents' possession or control that contradicts, qualifies, or calls into question the representation or the basis relied upon for it.

Analysis to Aid Public Comment

Part V of the proposed order requires distribution of the order, for five (5) years from the date of issuance, to officers and directors of the corporations; managers who have responsibilities with respect to the subject matter of the order; and personnel involved in sales, admissions, recruitment, or responding to consumer complaints and inquiries.

Part VI of the proposed order requires that the Commission be notified of any changes in the corporations that might affect compliance obligations under the order. Part VII of the proposed order requires that, for a period of five (5) years, the individual respondent notify the Commission of any new business affiliation or employment that involves the advertising, promotion, or sale of vocational training programs.

Part VIII of the proposed order requires that for a period of five (5) years, respondents undertake a monitoring program to ensure that all employees or independent contractors engaged in admissions, recruiting, sales, or other customer service, comply with Parts I, II, and III of the order.

Part IX of the proposed order requires the respondents to file compliance reports with the Commission. Part X of the proposed order states that the Commission, without prior notice, may use investigators to pose as prospective consumers of respondents. Finally, Part XI of the proposed order states that, absent certain circumstance, the order will terminate twenty (20) years from the date it is issued.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

Analysis to Aid Public Comment

**CONCURRING STATEMENT
OF COMMISSIONER SWINDLE**

When the Commission issued its revised guides for vocational schools, I dissented on the ground that the guides were not needed because these schools were already subject to the standards of and regulation by the United States Department of Education, state licensing boards, and private accreditation bodies. I also explained that these federal and state regulatory bodies should act in the first instance to enforce their standards to address misrepresentations by vocational schools. If their enforcement efforts are unsuccessful, then Commission law enforcement action may be justified. Because the respondents continued to make misrepresentations even after the United States Department of Education terminated their participation in a federal loan program and after state authorities twice issued citations to them, Commission law enforcement action here is warranted.

Complaint

IN THE MATTER OF
THE KROGER COMPANY AND FRED MEYER,
INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3917; File No. 991 0024
Complaint, January 10, 2000--Decision, January 10, 2000

This consent order addresses the merger of respondent Jobsite Holdings, Inc., a wholly-owned subsidiary of Kroger, with and into Fred Meyer, through which Fred Meyer will become a wholly-owned subsidiary of Kroger. The consent order requires, among other things, to divest eight specific supermarkets in relevant markets, five of which were owned by Kroger and three of which were owned by Fred Meyers prior to the merger. From the time of the merger until the completion of the divestitures, respondents must maintain the competitiveness and viability of the assets to be divested.

Participants

For the Commission: *Phillip L. Broyles, Daniel P. Ducore, Alan A. Fisher, Jill M. Frumin, Jonathan Kanter, Richard Liebeskind, Valicia A. Spriggs, and Gregory S. Vistnes.*

For the Respondents: *Deborah L. Feinstein, Arnold & Porter; and Brian Byrne and David I. Gelfand, Cleary, Gottlieb, Steen & Hamilton.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent The Kroger Co.