

Complaint

67 F.T.C.

IN THE MATTER OF

AMERICAN RETAIL BOARD OF TRADE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-898. Complaint, May 18, 1965—Decision, May 18, 1965*

Consent order requiring a Springfield, Mo., collector of delinquent accounts, operating a small business with one office and one employee to assist with the individual respondent, to cease representing falsely, through the use of their trade name and the use of fictitious terms and statements in the course of business, that their business is a nationwide organization of retailers with corresponding attorneys and collectors affiliated with them.

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 the American Retail Board of Trade, Inc., a corporation, and Alvin B. Ayers, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Retail Board of Trade, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri with its office and principal place of business located at 1022 South Glenstone Street, M.P.O. 108, in the city of Springfield, State of Missouri.

Respondent Alvin B. Ayers is an officer of said corporation. He formulates, controls and directs the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of the individual respondent is the same as that of the corporate respondent.

PAR. 2. Respondents now operate, and have operated for more than one year last past, a collection agency under the name American Retail Board of Trade, Inc. Business is secured by respondents by solicitation of agents.

Respondents use assignment forms upon which each delinquent account is listed showing the name of the debtor, address, date of indebtedness incurred and the amount due. These assignment forms are sent from respondents' place of business in the State of Missouri to creditors located in various States of the United States. The credi-

tor executes the form assigning the accounts, so listed, to respondents for collection on a commission basis, and returns it to respondents at Springfield or it is sent to respondents by one of their agents.

The debtors concerned reside in various States other than the State of Missouri. Respondents receive money from debtors located in States other than Missouri and transmit it, less their commission, to creditors who reside elsewhere than in Missouri. Respondents often receive checks from creditors representing debts paid direct to the creditor.

In carrying on their aforesaid business respondents maintain, and at all times hereinafter mentioned have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with other corporations, firms and individuals engaged in the business of collecting alleged delinquent accounts.

PAR. 4. Through the use of the name American Retail Board of Trade, Inc., said respondents represented, and now represent, directly or by implication, that the corporate respondent is a nationwide organization of retailers.

PAR. 5. In truth and in fact, the corporate respondent is not an organization of retailers and has no connection with any organization of retailers but, on the contrary, the sole business of the respondents is the operation of an agency for the collection of alleged delinquent accounts.

Therefore, the statements and representations set forth in Paragraph Four are false, misleading and deceptive.

PAR. 6. Respondents, in the course and conduct of their aforesaid business, and for the purpose of inducing individuals, firms and corporations to sign the aforesaid assignments, as well as aiding in making collections from debtors, have made certain statements and representations, directly or by implication, with respect to their business. Typical, but not all inclusive, of such statements and representations are the following:

1. Nation-wide corresponding attorneys and collectors.
2. Dear Member.
3. Processing by our staff of experts is well under way.
4. Karl Quinn. Pre-Legal Dept.
5. Robert Formar. Collection Department.
6. Carl Stine, Manager, Collection Dept.
7. Manager—Legal Department.
8. J. W. Kerns, Pre-Legal Department.

PAR. 7. By and through the use of the aforesaid statements and representations, respondents represented, and now represent, directly or by implication, that:

1. The business of the respondents is nationwide in scope with corresponding attorneys and collectors directly affiliated and connected with them.

2. The corporate respondent is an organization having members.

3. The business of respondents is departmentalized and has a considerable staff of employees.

PAR. 8. In truth and in fact:

1. The business of the respondents is not nationwide in scope and does not have corresponding attorneys and collectors affiliated and connected with them but, on the contrary, respondents' business is a small one with no departments, one office and one employee to assist the individual respondent.

2. The corporate respondent has no members but, on the contrary, those designated as "members" are persons who have assigned alleged delinquent accounts to the respondents for collection.

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

PAR. 9. The use by respondents of the foregoing false, deceptive and misleading representations and practices has had, and now has, the tendency and capacity to mislead a substantial number of creditors and debtors into the erroneous and mistaken belief that such representations were, and are, true, and into the assignment of accounts to it for collection and in the collection of monies from debtors because of such mistaken and erroneous belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent American Retail Board of Trade, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 1022 South Glenstone Street, M.P.O. Box 108, in the city of Springfield, State of Missouri.

Respondent Alvin B. Ayers is an officer of said corporate respondent and his address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents, American Retail Board of Trade, Inc., a corporation, and its officers, and Alvin B. Ayers, individually and as an officer of said corporation, and said respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the solicitation of accounts for collection, or the collection of, or attempts to collect accounts, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the name "American Retail Board of Trade, Inc." or any other name of similar import or meaning; or representing, directly or by implication, that they are an organization of retailers or are connected in any manner with an organization of retailers;

2. Representing in any manner, directly or by implication, that their business is other than that of a private collection agency engaged in collecting alleged past due accounts;

3. Representing, directly or by implication, that their business is nationwide in scope or that they have corresponding attorneys and collectors affiliated or connected with them;

Opinion

67 F.T.C.

4. Misrepresenting the size of the business through the use of fictitious names or departments or by any other means;

5. Representing that the corporate respondent has members or designating the persons who assign accounts to the respondents as "members."

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.

IN THE MATTER OF

INTERSTATE TRAINING SERVICE CORPORATION ET AL.

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

Docket 5764. Complaint, Apr. 17, 1950—Decision, May 19, 1965

Order modifying cease and desist order of December 5, 1950, 47 F.T.C. 680, against sellers of a correspondence course in the operation, maintenance, and repair of Diesel engines, by modifying paragraphs 1, 2, 3, and 8 of the order prohibiting misrepresentation as to selection of students, length of course, relationship with manufacturers, and on-the-job training.

OPINION OF THE COMMISSION

On December 5, 1950 [47 F.T.C. 680], the Commission issued an order against respondents providing in pertinent part as follows:

It is ordered, That Conard E. Green and Leon A. Crouch, individually and as copartners trading under the name of Interstate Training Service, or trading under any other trade or partnership name, and their agents, representatives, and employees, directly or indirectly, through any corporate or other device, in connection with the sale, offering for sale or distribution of courses of study and instruction in Diesel training and training in heavy equipment and gasoline engines, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That students are selected and accepted on the basis of their mechanical aptitude or upon the recommendation of respondents' representatives;
2. That the training in Diesel engine equipment may be completed in 1 year with 1 or 2 hours a day devoted to the study of the course;
3. That respondents work closely with manufacturers, contractors or others in the Diesel engine field;

* * * * *

7. That the opportunities for employment, improvement, and advancement in the field of Diesel equipment operation are unusual and unlimited for those

who take respondents' course without many years of previous practical experience in that field;

8. That students receive resident shop or on-the-job training;

* * * * *

On March 15, 1965, respondents, by their attorneys, filed with the Commission an Amended Petition to Set Aside Cease and Desist Order. An answer partly in opposition to respondents' petition was filed by the Bureau of Deceptive Practices April 14, 1965.

Although respondents' petition alludes to prohibitions in the order other than those set forth above, it does not raise any substantial objection to them but rather confines itself to an assertion that respondents are in compliance.

Compliance with an order is not, under the Commission's Rules, sufficient reason for setting it aside, and accordingly in this opinion and order the Commission addresses itself solely to those prohibitions of the original order as to which respondents have submitted new facts and argument in favor of amendment, modification or excision.

In support of its petition that Paragraph 1 of the order be set aside respondents cite a catalog issued by them in conjunction with Interstate Training Service (ITS) Home Study Course 302 concerned with the maintenance, repair, and rebuilding of Cummins' Diesel engines. The catalog in question notes that enrollment in the course is restricted to "men who have demonstrated their interest in Diesel as a career" and is accordingly limited to persons who are qualified to take the course either by virtue of employment by Cummins Engine Company, in collaboration with which respondents offer the course, or because the applicant has had mechanical experience, or has completed preliminary Diesel courses offered by respondents or is employed by owners of Cummins' equipment.

In further support of their assertion that they should no longer be subjected to this proscription, respondents cite the affidavit of one H. M. Percifield, Manager, Service Development, Cummins Engine Company, Inc. Mr. Percifield attests that the qualification requirements for Course 302 are adhered to by Interstate Training Service.

In short, at least as to Course 302, it appears that respondent does make a determination as to the suitability of students and the affidavit of Mr. Percifield supports the assertion that the selectivity requirements as stated in the catalog are being met.

On the basis of the foregoing we are persuaded, as is the Bureau of Deceptive Practices, that the prohibition of our original order may be too rigorous, preventing as it does any representation as to selectivity and determination of qualifications. On the other hand,

