

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY**

Case No. 1:12-CV-188-R

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CAREER EXAMS, INC.,  
a corporation, also  
d/b/a Career Advancement Group;

O'BRIEN MARKETING, INC.,  
a corporation, also  
d/b/a O'Brien Consulting,  
and O'Brien Answers;

JERYN B. LEE,  
individually and as an officer of  
Career Exams, Inc.; and

DEREK JACKSON,  
individually and as an officer of  
O'Brien Marketing, Inc.;

Defendants.

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with the sale of purported

employment goods or services to consumers who are seeking jobs with the United States Postal Service.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

4. A substantial part of the events or omissions giving rise to this claim occurred in the Bowling Green jury division.

### **PLAINTIFF**

5. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41–58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

6. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b) & 56(a)(2)(A).

### **DEFENDANTS**

7. Defendant Career Exams, Inc., also d/b/a Career Advancement Group, (“Career Advancement”) is a Kentucky corporation with its principal place of business at 1711 Ashley Circle, Bowling Green, Kentucky. Career Advancement transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others including O’Brien Marketing, Career Advancement has

advertised, marketed, distributed, or sold employment goods or services to consumers throughout the United States who are seeking jobs with the United States Postal Service.

8. Defendant O'Brien Marketing, Inc., also d/b/a O'Brien Consulting and O'Brien Answers, ("O'Brien Marketing") is a Kentucky corporation with its principal place of business listed in Kentucky public records as 602 Green Valley Drive, Russellville, Kentucky. O'Brien Marketing transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, acting alone or in concert with others including Career Advancement, O'Brien Marketing has advertised, marketed, distributed, or sold employment goods or services to consumers throughout the United States who are seeking jobs with the United States Postal Service.

9. Defendant Jeryn B. Lee is the sole officer and owner of Career Advancement. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Career Advancement, including the acts and practices set forth in this Complaint. Defendant Jeryn B. Lee resides in this district, and in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

10. Defendant Derek Jackson is the sole officer and owner of O'Brien Marketing. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of O'Brien Marketing, including the acts and practices set forth in this Complaint. Defendant Derek Jackson resides in this district, and in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

## UNITED STATES POSTAL SERVICE HIRING

11. The United States Postal Service (the “Postal Service”) is an independent, self-supporting federal agency within the executive branch. The Postal Service requires most applicants seeking entry-level permanent employment to take a competitive entrance examination. To take this entrance examination, an individual must both apply for an open position and be selected by the Postal Service to take the exam.

## COMMERCE

12. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

## DEFENDANTS’ BUSINESS ACTIVITIES

13. Since at least July 2008, Defendants have conducted a nationwide advertising and telemarketing scheme to sell purported employment goods or services to consumers throughout the United States who are seeking jobs with the Postal Service.

14. Defendants place classified advertisements in the employment sections of local newspapers throughout the United States and on the local listing pages of job search websites such as CareerBuilder.com and Yahoo! Hot Jobs. The advertisements announce that jobs are available with the Postal Service and invite readers to call a toll-free telephone number. The following is the text of a typical ad:

**2012 Postal Positions**  
\$13.00 - \$32.50+/hr.,  
Federal hire/full benefits  
No Experience, Call Today  
1-800-593-2664 ext. 202

15. When consumers call the toll-free telephone numbers listed in Defendants’ advertisements, they are often initially placed on hold. While consumers wait for their call to be

answered, Defendants play a recording containing statements that suggest the ready availability of Postal Service employment. The following are examples of recorded statements played for consumers:

The United States Postal Service added 636,530 new delivery points to its network in 2011.

Did you know that the government sector is the largest growing area of employment in the United States? You are taking the first step in preparing yourself for success in a position with the U.S. Government.

16. Whether or not they are initially placed on hold, consumers who call the Defendants' toll-free telephone numbers are eventually connected to Defendants' telemarketers, who follow a common sales presentation. First, the telemarketers ask consumers where they live. Next, the telemarketers ask consumers several short questions on topics such as the consumers' citizenship, age, health, ability to pass a drug test, and criminal history. At the end of these questions, the telemarketers tell consumers that they are "qualified."

17. Defendants' telemarketers then typically name a variety of Postal Service positions—such as carrier, sorter, or clerk—for which the consumers could apply. The telemarketers typically also describe a range of average hourly wages paid for these positions and state that full benefits are available for full-time employment. In numerous instances, when consumers seek confirmation of the availability of Postal Service jobs, the Defendants' telemarketers assure them that Postal Service jobs are available in the consumers' specific geographic areas.

18. Defendants' telemarketers next tell consumers that they must pass an exam to obtain a job with the Postal Service and that, for a substantial fee, typically about \$120, the Defendants will provide exam materials.

19. In numerous instances, the Defendants' telemarketers tell consumers that their

money will be refunded if the consumers do not pass the exam or if they are not hired.

20. Consumers who purchase from the Defendants receive a booklet titled “Federal Employment Guide.” The booklet contains general information about the hiring process for the federal civil service and the Postal Service, a description of a Postal Service exam, and a sample Postal Service exam.

21. The Defendants’ booklet also includes a full-page statement of the Defendants’ refund policy, which states, in part, as follows:

Career Advancement Group requires that you have applied for a federal position and have been rejected. You must furnish Career Advancement Group with an official copy of your rejection notice or test score that indicates this.

22. In numerous instances, consumers who purchase exam materials from the Defendants later find that the Postal Service is neither hiring nor offering examinations for permanent positions in the consumers’ geographic areas.

23. Consumers who seek refunds are referred to the Defendants’ written refund policy, which requires that consumers furnish documentation that they have been rejected for federal employment or failed the Postal Service entrance examination.

24. In numerous instances, consumers are unable to furnish the documentation required under the written refund policy because there are no openings for permanent positions at the Postal Service from which to be rejected and no Postal Service examinations to fail in the consumers’ geographic areas.

#### **VIOLATIONS OF THE FTC ACT**

25. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

26. Misrepresentations or deceptive omissions of material fact constitute deceptive

acts or practices prohibited by Section 5(a) of the FTC Act.

## COUNT I

### False or Misleading Representations

27. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of purported employment goods or services, Defendants represent, directly or indirectly, expressly or by implication, that

- a. permanent, full-time positions with the Postal Service are available in the geographic areas where Defendants' advertisements appear;
- b. the Postal Service is offering examinations for permanent, full-time positions in the geographic areas where Defendants' advertisements appear;
- c. consumers who purchase from the Defendants are likely to obtain permanent, full-time positions with the Postal Service in the geographic areas where Defendants' advertisements appear; and
- d. purchasing consumers who do not obtain permanent, full-time positions with the Postal Service in the geographic areas where Defendants' advertisements appear will receive refunds.

28. In truth and in fact, in numerous instances in which Defendants make the representations set forth in Paragraph 27 of this Complaint,

- a. permanent, full-time positions with the Postal Service are not available in the geographic areas where Defendants' advertisements appear;
- b. the Postal Service is not offering examinations for permanent, full-time positions in the geographic areas where Defendants' advertisements appear;

- c. consumers who purchase from the Defendants are not likely to obtain permanent, full-time positions with the Postal Service in the geographic areas where Defendants' advertisements appear; and
- d. purchasing consumers who do not obtain permanent, full-time positions with the Postal Service in the geographic areas where Defendants' advertisements appear do not receive refunds.

29. Therefore, Defendants' representations as set forth in Paragraph 27 of this Complaint are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### **CONSUMER INJURY**

30. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

#### **THIS COURT'S POWER TO GRANT RELIEF**

31. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

#### **PRAYER FOR RELIEF**

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to a temporary restraining order, a preliminary injunction, an order freezing assets, the appointment of a temporary receiver, and immediate access to the Defendants' business premises to inspect and copy records;

B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including but not limited to rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

November 1, 2012

David C. Shonka  
Acting General Counsel

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