

# FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, JANUARY 1, 1969, TO  
JUNE 30, 1969

IN THE MATTER OF

BURLINGTON INDUSTRIES, INC.

CONSENT ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED  
VIOLATION OF SEC. 7 OF THE CLAYTON ACT

*Docket C-1473. Complaint, Jan. 2, 1969—Decision, Jan 2, 1969*

Consent order requiring the Nation's largest textile manufacturer with headquarters in Greensboro, N.C., to cease acquiring any textile mill product corporation for a period of 10 years without prior approval of the Commission.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated the provisions of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18) and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

### I

#### Definitions

1. For the purpose of this complaint the following definitions shall apply:

(a) "Textile mill product" means any of the following named products at any stage of processing, dyeing, finishing, treating, fabrication, or manufacture: (1) yarn, (2) thread, (3) braids, (4) twine, (5) cordage, (6) broad woven fabric (fabric over 12 inches in width), (7) narrow woven fabric (fabric of 12 inches or less in width), (8) knit fabric, (9) carpets and rugs, (10) felt goods, (11) lace goods, (12) bonded fabrics, or (13) miscellaneous products manufactured from fiber by knitting, weaving, braiding or tufting.

(b) "Textile mill products industry" means those business enterprises which process or manufacture and sell one or more textile mill products, as defined above, and in addition, those business enterprises known as "converters," which buy one or more textile mill products in the gray, have such products finished on contract, and sell such products at wholesale.

## II

## Respondent Burlington Industries, Inc.

2. Respondent Burlington Industries, Inc. (hereinafter referred to as "Burlington") is, and has been, a corporation organized and existing under the laws of the State of Delaware with its office and principal place of business located at 301 North Eugene Street, Greensboro, North Carolina.

3. Burlington is engaged in the manufacture and sale of a wide variety of textile mill products including, but not limited to, apparel fabrics, hosiery products, fabrics and products for the home (such as broadloom carpets and rugs, and sheets and pillowcases), yarns and industrial fabrics.

4. In the course and conduct of its business, as aforesaid, Burlington is engaged in commerce as "commerce" is defined in the Clayton Act and has been continuously so engaged under its present and prior names at least since 1950.

5. For the fiscal year ended September 30, 1967, Burlington had net sales of approximately \$1,364,552,000, substantially all of which consisted of sales of textile mill products. As of September 30, 1967, the total assets of Burlington amounted to approximately \$1,027,564,000.

6. Burlington's development has been characterized through the years by continuous growth. As the surviving corporation of variously-named predecessor corporations, Burlington's net sales increased from approximately \$27,196,000 for the year ended December 31, 1938, to approximately \$360,839,261 for the year ended October 3, 1953.

7. Since 1953, this growth has continued and has been accelerated by the acquisition of the stock and assets of corporations manufacturing and selling a variety of textile mill products.

8. Burlington is the world's largest and most diversified manufacturer of textile mill products. By the end of 1967, Burlington employed 74,000 people, operated 127 plants in the United States, and had international operations in nine foreign countries.

## III

## Erwin Mills, Inc., The Acquired Corporation

9. Prior to January 19, 1962, Erwin Mills, Inc. (hereinafter referred to as "Erwin") was a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business located at Durham, North Carolina.

10. Erwin owned and operated plants located in Durham, North Carolina, Erwin, North Carolina, Cooleemee, North Carolina and Stonewall, Mississippi.

11. Erwin was engaged in the manufacture and sale of a variety of textile mill products including finished cotton textile fabrics for work clothing, twills, sportswear, bedford cord fabrics and denims, and sheets and pillowcases.

12. In the course and conduct of its business, as aforesaid, Erwin was engaged in commerce as "commerce" is defined in the Clayton Act, and had been continuously so engaged at least since 1960.

13. For the fiscal year ended September 30, 1961, Erwin had net sales of approximately \$67,697,000 substantially all, if not all, of which consisted of sales of textile mill products. As of September 30, 1961, the total assets of Erwin amounted to approximately \$40,736,000.

14. Erwin's development had been characterized through the years by continuous growth. For the year ended December 31, 1949, Erwin had net sales of approximately \$49,097,000. For the year ended September 30, 1961, its net sales amounted to approximately \$67,697,000.

## IV

## The Acquisition

15. On or about January 19, 1962, Burlington acquired a majority of the common stock of Erwin. Subsequently, through a tender offer, Burlington acquired substantially all of the remaining stock so that by December 4, 1962, Burlington had acquired approximately ninety-nine percent of the common stock of Erwin.

## V

## The Nature of Trade and Commerce

16. The textile mill products industry in the United States is

substantial in terms of total dollar sales, as well as in terms of extensive domestic end usage of its finished products and extensive intermediate usage by other industries.

17. Historically, the textile mill products industry in the United States has been characterized by a substantial number of small competitive entities performing a limited variety of functions in connection with a limited number of textile mill products.

18. Since 1950, a significant change in the structure of the textile mill products industry in the United States has been taking place in that a limited number of integrated enterprises processing and manufacturing a wide variety of textile mill products have been moving toward dominant positions in the industry.

19. This change has been contributed to, in substantial part, by numerous mergers and acquisitions of textile mill products companies.

20. Since 1950, there has been a substantial increase in concentration in the textile mill products industry in the United States which has been effectuated by the consolidation of all sizes and types of concerns in that industry.

22. In 1963, the year after the acquisition of Erwin, Burlington continued to rank first in the textile mill products industry in the United States with net sales of approximately \$1,085,000,000.

## VI

### Adverse Competitive Effects

23. The effect of the acquisition by Burlington of Erwin may be substantially to lessen competition or to tend to create a monopoly in the textile mill products industry in the United States, in the following ways, among others:

(a) Actual competition between Burlington and Erwin has been eliminated.

(b) Potential competition between Burlington and Erwin has been eliminated.

(c) A substantial independent factor has been eliminated.

(d) Competitive advantages over other members of the industry have been increased substantially.

(e) Concentration has been increased substantially.

(f) Barriers to entry have been increased substantially.

(g) The structure of the industry has been altered to the

actual or potential detriment of a substantial segment of the industry.

(h) A serious trend toward concentration through merger by industry segments may be accelerated.

## VII

## The Violation Charged

24. The acquisition by Burlington of the stock of Erwin constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Section 18).

## SEPARATE STATEMENT

JANUARY 2, 1969

BY MACINTYRE, *Commissioner*:

Commissioner MacIntyre noted for the attention of all concerned that the Commission's consideration of guidelines for the textile industry will receive further consideration of the Commission on January 22, 1969.

## DISSENTING STATEMENT

JANUARY 2, 1969

BY JONES, *Commissioner*:

By acceptance of the consent order in this case the Commission has apparently concluded that Burlington's acquisition of Erwin Mills violates Section 7 of the Clayton Act, but that the anti-competitive consequences of this acquisition are not sufficient to require divestiture.

Yet the Commission has simultaneously concluded that concentration in the textile mill products industry which has resulted from the "large number of horizontal, vertical and product extension mergers undertaken by the leading firms" has become sufficiently anticompetitive to warrant what amounts to the imposition of a virtual ban on all future mergers in this industry at least when engaged in by the top four and perhaps by the top eight firms.<sup>1</sup>

<sup>1</sup>The Commission's guidelines identify the mergers which will be "examined" by the Commission. These include mergers between companies whose combined sales or assets exceed \$300 million and for which the sales or assets of the smaller firm exceed \$10 million. Also identified by the guidelines are those mergers in which the combined firms rank among the top four in the industry or have a combined market share in excess of 5 percent of any submarket in which the top four firms account for 35 percent.

The Commission asserted in its guideline statement that the concentration with which it is so concerned has been triggered by the acquisitions of the top four firms in the industry and to some extent by the top eight, establishing in turn, an increasing size disparity between the leading firms and other members of the industry. The Commission also asserted that the firms making the acquisitions have principally been those which have both the production and marketing knowhow and the resources necessary to enter industries by internal expansion. If the mergers described in the guidelines will give rise to possible anticompetitive consequences in the future when engaged in by the rest of the industry, all of whom rank well below Burlington in asset and sales value, I cannot understand how the Commission can conclude that identical mergers entered into by Burlington during the past decade do not also give rise to anticompetitive consequences or to the likelihood of such consequences.

Throughout the last decade Burlington has had assets in excess of the guideline criterion of \$300 million. Indeed its industry sales reached \$1.3 billion for the year ending in October 1966 while its nearest competitor's sales were \$805 million. At least six acquisitions made by Burlington in the past ten years involved companies with assets in excess of \$10 million and hence on asset value alone would currently require "examination" under the Commission's Textile guidelines.<sup>2</sup> Moreover, one of these acquisitions gave Burlington a combined market share of 15 percent, and two of them moved Burlington into a position as one of the top four firms in each of the markets in which the acquired companies were active.<sup>3</sup> Thus Burlington has made at least six mergers, two since 1960, which would violate the Commission's own guidelines.

<sup>2</sup> Burlington's 1954 acquisition of Pacific Mills put together Pacific, a manufacturer of cotton, rayon, cotton synthetic blend fabrics, and woolen and worsted fabrics with 1953 sales of \$121.2 million and assets of \$79.1 million, with Burlington whose 1953 pre-acquisition assets were \$300 million. Likewise its merger with Goodall-Sanford, also in 1954, added to Burlington's already guideline-"violating" asset figure of \$300 million a firm which produced mohair-blended fabrics for men's, boys', and women's wear, as well as miscellaneous lines, and had 1954 assets and sales of \$37.6 and \$49.7 million respectively, well in excess of the \$10 million guideline figure. Burlington's 1955 acquisition of Ely and Walker Dry Goods Company, a cotton fabrics manufacturer and dry goods seller, also "violates" the \$300 million-\$10 million guideline, as Burlington with pre-acquisition assets of \$382 million (and sales much higher) acquired Ely and Walker which had 1954 sales of \$117.4 million and assets of \$82.1 million. Burlington's 1962 acquisitions of Fabrex Corp., a textile fabric converter, "violates" the \$10 million acquired firm guideline as Fabrex had 1961 sales of \$35.5 million.

<sup>3</sup> The James Lees merger gave Burlington 8.7 percent of a market in which it had previously enjoyed 1.75 percent, with top four industry concentration over 35 percent. The Erwin Mills Co. merger gave Burlington a 15 percent market share in an industry where the top four accounted for 55 percent of total 1963 sales.

It of course could be argued that these Burlington acquisitions did not have the same serious anticompetitive consequences at the time they were consummated that they would have if consummated now in an industry whose competitive atmosphere has darkened through overall increased concentration. However, in fact in publishing its textile guidelines, the Commission described structural characteristics which fit the Burlington acquisitions perfectly and, by positing that anticompetitive consequences are now likely to follow from such structural characteristics, has implicitly admitted that Burlington's past acquisitions are also *now* likely to have those same anticompetitive consequences. For example, the increased concentration in the overall textile mill products industry from 1958-1963 pointed out in the Commission's guideline statement indicates that the Fabrex, Lees and Erwin mergers (1960-62) took place in the self-same darkening atmosphere of increased concentration which posited the anticompetitive consequences which the Commission points to as constituting the major rationale for the industry guidelines.

Therefore, I cannot justify the Commission's apparently double enforcement standard being applied here—one standard for Burlington and another for the balance of the industry. There are seven other companies in this industry whose sales exceed \$300 million and whose mergers therefore will automatically be "examined" under the guideline criterion of size alone. To be safe, each of these companies must now plan its future expansion programs in terms of internal growth. Yet Burlington who ranks first in the industry is permitted by the Commission to keep the fruits of its merger expansion program by means of which it was enabled to become number one in the industry.

I realize that whenever the Commission determines that concentration in a given industry is showing anticompetitive potential, an attempt to deflect or arrest its future enhancement will have some inequitable impact as between those mergers already accomplished which contributed to the creation of the anticompetitive situation and those still in the planning stage or even as yet un contemplated. Nevertheless, to validate past mergers of the number one company in an industry and foreclose the merger path to growth on the part of its competitors strikes me as unfair and unjustified.

If the Commission's guidelines represent sound policy, then it seems to me that Burlington's acquisitions described above should have been challenged and divestiture sought. Instead the

Commission here accepts a consent order which forecloses the possibility of definitely determining this anticompetitive issue and at the same time issues guidelines which foreclose comparable acquisitions on the part of Burlington's competitors. It is this type of inconsistency in the enforcement of the antitrust laws which renders compliance with them so difficult. Business is entitled to some degree of certainty and predictability. This cannot be achieved unless enforcement action is consistent, equitable and intelligent.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 7 of the Clayton Act, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 (b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Burlington Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 301 North Eugene Street, in the city of Greensboro, State of North Carolina 27420.



2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

## ORDER

## I

*It is ordered*, That, for the purposes of this Order, the following definitions shall apply:

(a) "Textile Mill Product Corporation" means any corporation which at any stage processes, dyes, finishes, treats, fabricates, or manufactures one or more of the following named products: (1) yarn, (2) thread, (3) braids, (4) twine, (5) cordage, (6) broad woven fabric (fabric over 12 inches in width), (7) narrow woven fabric (fabric of 12 inches or less in width), (8) knit fabric, (9) carpet and rugs, (10) felt goods, (11) lace goods, (12) bonded fabrics, or (13) miscellaneous products manufactured from fiber by knitting, weaving, braiding or tufting. In addition, the definition of "Textile Mill Product Corporation" shall include any corporation which buys one or more of the aforesaid products in the gray, has such products finished on contract, and sells such products to purchasers other than end-users, such type of business operations being hereinafter referred to as "converting."

(b) "Textile Mill Product Assets" means assets, rights and privileges, tangible or intangible (other than non-exclusive licenses), including, but not restricted to, properties (other than real property, the disposition of which does not affect the continuation by the seller of the business in which such real property was used), plants machinery or equipment (other than machinery or equipment, the disposition of which does not affect the continuation by the seller of the business in which such machinery or equipment was used), inventories (other than products regularly and customarily purchased and sold in the ordinary course of business), contract rights, trade-marks, trade names or goodwill, of any person, partnership or corporation which are located, or have been located, in the United States or which are used in the United States, or which have been used in the United States, directly or indirectly, in or in connection with the processing, dyeing, finishing, treating, fabricating, manufacturing, or "converting" of one or more of the following

named products: (1) yarn, (2) thread, (3) braids, (4) twine, (5) cordage, (6) broad woven fabric (fabric over 12 inches in width), (7) narrow woven fabric (fabric of 12 inches or less in width), (8) knit fabric, (9) carpet and rugs, (10) felt goods, (11) lace goods, (12) bonded fabrics, or (13) miscellaneous products manufactured from fiber by knitting, weaving, braiding or tufting.

## II

*It is further ordered,* That, for a period of ten (10) years following the effective date of this order, Burlington Industries, Inc., shall cease and desist from acquiring directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Commission the whole or any part of the stock or other share capital of any Textile Mill Product Corporation doing business in the United States and shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Commission any Textile Mill Product Assets. As used in this Paragraph, the acquisition of Textile Mill Product Assets includes any arrangement by respondent with any other party, pursuant to which such other party discontinues manufacturing any Textile Mill Products under a brand name or label owned by such other party and thereafter distributes any of said products under any of respondent's brand names or labels.

## III

*It is further ordered,* That within sixty (60) days after the effective date of this Order and at such further times as the Commission may require Burlington Industries, Inc., shall submit written reports to the Federal Trade Commission setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this order.

*It is further ordered,* That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

IN THE MATTER OF  
AUTOMATION MACHINE TRAINING CENTER, INC., ET AL.  
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-1474. Complaint, Jan. 6, 1969—Decision, Jan. 6, 1969*

Consent order requiring a Kansas City, Mo., data processing school to cease falsely representing the employment opportunities of its enrollees, the financial assistance and refund provisions afforded, that it operates dormitories, and that it teaches computer programming.

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 Automation Machine Training Center, Inc., a corporation, and Emmett R. Davis, 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 Automation Machine Training Center, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 611 West 39th Street, Kansas City, Missouri.

Respondent Emmett R. Davis is an individual and an officer of said corporation. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for more than three years last past, engaged in the offering for sale, sale and distribution of courses of instruction intended to prepare students thereof for employment in various positions in the field of electronic data processing. Said courses are pursued by correspondence through the United States mails and by resident training at respondents' place of business in Kansas City, Missouri.

Complaint

75 F.T.C.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, the correspondence portion of their courses, when sold, to be shipped from their place of business in the State of Missouri to purchasers thereof located in various other States of the United States. Respondents also receive from and transmit to such purchasers, contracts, checks and other instruments of a commercial nature pertinent to the sale of such courses. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said courses of instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their courses, respondents publish or have caused to be published, in newspapers distributed through the United States mails and by other means, advertisements respecting job offers, salaries and training.

Among and typical, but not all inclusive, of such advertisements are the following:

H E L P  
W A N T E D  
I B M  
A U T O M A T I O N  
S A L A R Y \$ 3 5 0 - \$ 7 5 0

SOLID SECURITY OPPORTUNITY FOR BOTH YOUNG MEN AND  
WOMEN . . . AGES 18-49.

Short Training period.  
Send Your Name, Address,  
Phone, Education Today to:  
Director of IBM Automation Development,  
Box 665 c/o Sedalia Democrat-Capital.

C A R E E R  
O P P O R T U N I T Y  
I B M O P E R A T O R S  
S E R I O U S L Y N E E D E D  
\$ 3 5 0 - \$ 7 0 0

This is a future in a big industry for men and women age 18-49. Short training period required; all inquiries acknowledged. Reply to Directive IBM Automation, Box No. 4, care of Aberdeen American-News, giving name, address, age and phone No.

YOUR KEY TO GREATER SUCCESS  
BUSINESS — INDUSTRY — GOVERNMENT  
URGENTLY NEED MEN & WOMEN  
WITH

IBM Machine Training  
in key punch, computers,  
tab wiring & programming

Persons accepted can be trained in a program which need not interfere with their present job. If you qualify, training can be financed.  
For FREE BOOKLET on your future in IBM DATA PROCESSING, write today. Please include age, address and home phone number.

A.M.T.C.

Director of Development

PAR. 5. By and through the use of the statements and representations appearing in the advertisements set forth in Paragraph Four hereof and various other statements and representations of similar import and meaning but not set forth herein, respondents represent, and have represented, directly or by implication, that:

1. Inquiries are being solicited for the purpose of offering employment to qualified applicants who will be trained to operate various machines manufactured or distributed by the International Business Machines Corporation (IBM);

2. By virtue of having received such training, persons will receive starting salaries of at least \$350 per month;

3. The training offered includes computer programming.

PAR. 6. In truth and in fact:

1. Inquiries are solicited not for the purpose of offering employment; but for the purpose of obtaining leads to persons interested in purchasing respondents' courses.

2. Persons who complete courses offered by respondents do not by virtue of such training receive starting salaries of at least \$350 per month.

3. Respondents do not offer training in computer programming.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were, and are, false, misleading and deceptive.

PAR. 7. In the further course and conduct of their business, as aforesaid, respondents cause prospective purchasers of their courses to be visited by sales representatives who endeavor to sell and do sell respondents' said courses of instruction to said

persons. For the purpose of inducing the sale of said courses, respondents' sales representatives make many statements and representations, directly and by implication, regarding said courses, both orally and by means of brochures and other printed material furnished by respondents and displayed to such persons.

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

1. Respondents have a placement service which guarantees and assures each graduate placement in a job for which he has been trained;
2. Graduates of respondents' course will be placed in jobs in the geographical area of their choice;
3. After the initial payment of respondents' courses is made, the remainder of the payments may be deferred until after the student has completed the course and obtained employment;
4. Respondents will provide part-time employment to assist students attending the resident training in making payments on the balance of their tuition;
5. Respondents own or supervise residence facilities for students attending the resident training portion of respondents' courses, and such residence facilities are within easy walking distance of respondents' school.
6. Interest free tuition loans are available which will enable the recipient thereof to pay the cost of respondents' courses in installments without any additional cost for that privilege.
7. Immediate employment is available to those students working on the correspondence portion of their courses if they will pay the balance of their tuition in full and attend the resident training as soon as possible.
8. Until a student has received written notification of the acceptance of his or her enrollment by respondents, the student may withdraw his or her enrollment and respondents will make a full refund of any money theretofore paid by or on behalf of said student.
9. Respondents will, at any time and upon request by or on behalf of an enrolled student who is unwilling or unable to complete respondents' course cancel said student's training contract and refund all money theretofore paid by or on behalf of said student.

PAR. 8. In truth and in fact:

1. Respondents do not have a placement service which guarantees or assures any graduate of placement in any job;

2. Graduates of respondents' courses are not placed in jobs in the geographical area of their choice;

3. Respondents do not permit students to defer the remainder of their payments until after the courses have been completed and employment obtained;

4. Respondents do not provide part-time employment to assist students attending the resident training in making payments on the balance of their tuition;

5. Respondents do not own or supervise any residence facilities for students attending the resident training, and such residence facilities as may be available are not within easy walking distance of the school;

6. Respondents do not provide loans of any kind. Although respondents may permit the cost of their courses to be paid in installments, the cost when paid in that manner is \$70 more than the cost when paid in cash in full at the time of enrollment.

7. Immediate employment is not available to those students working on the correspondence portion of their courses if they will pay the balance of their tuition in full and attend the resident training as soon as possible. The real purpose of the representation is to induce the accelerated payment of outstanding tuition balances.

8. Respondents do not permit prospective students to withdraw their enrollment applications prior to receipt of written notification of acceptance of such enrollments and do not refund any money theretofore paid by or on behalf of said prospective students.

9. Respondents neither cancel the training contracts of enrolled students who are unwilling or unable to complete respondents' courses and request cancellation nor refund any money theretofore paid by or on behalf of said students.

Therefore, the statements and representations as set forth in Paragraph Seven hereof were, and are, false, misleading and deceptive.

PAR. 9. In the course and conduct of their aforesaid 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 of instruction covering the same or similar subjects.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices, has had, and now has, the tendency and capacity to mislead

