IN THE MATTER OF

ITT CONTINENTAL BAKING COMPANY, INC., ET AL.

Docket 8860. Interlocutory Order, Feb. 16, 1973.

Order denying the motion of Consumers Federation of America, Consumers Union of the United States, Inc., and Federation of Homemakers, Inc., for permission to intervene, but granting the movants permission to file an *amicus* brief not to exceed 90 typewritten pages and to participate in the oral argument before the Commission.

DISSENTING STATEMENT

BY JONES, *Commissioner:*

The Commission's refusal to grant intervention to the three principle consumer organizations in the United States is directly contrary to established case law respecting the right of the public to intervene in administrative proceedings. It is also directly contrary to the Commission's own prior decisions in which it has laid down the standards under which it would, in the exercise of its discretion, permit intervention in its proceedings.

By its refusal to permit this intervention the Commission seems to be taking the position that its orders can have the potential of injuring the respondents affected but that these same orders, or its failure to issue an order, cannot injure or adversely affect those members of the public whose interests they are intended to protect. This I submit is wrong as a matter of law. It most certainly is wrong as a matter of fact. It is unwise and shortsighted as a matter of effective administrative agency policy. It is arbitrary and discriminatory in terms of the Commission's own practice with respect to intervention requests handled in the exercise of its discretion.

It is perhaps significant that the Commission, in denying this petition for intervention, has seen fit to write only a skeletal opinion which fails to come to grips with the legal and policy issues involved in this petition. Perhaps its failure to do so stems from its recognition of the difficulties it would confront in seeking to justify its decision in the instant case given the state of the law and its own prior actions.

In its opinion in *Firestone,* the Commission granted the intervenors SOUP a limited right to intervene directly in the adjudicative proceedings for the purpose of presenting evidence and arguments on the single issue of the adequacy of the relief to be

entered in the case.[1] In granting the intervention, the Commission noted that SOUP had demonstrated "good cause" to justify allowance of the intervention because it had raised the issue of the necessity for affirmative disclosure relief in a case involving a "public safety danger" for which such relief might be considered "especially appropriate." The Commission also noted that "this issue and this type of case" was high on its own list of priorities and that SOUP's intervention might "contribute to a fuller appreciation of the need for stronger remedies generally in Commission cases." Finally, the Commission noted that the requested intervention, besides being sought in a particularly appropriate case, would not in its judgment "unduly lengthen or complicate the case," nor "prejudice the rights of the respondent."

The circumstances surrounding the instant intervention are in all respects identical to the SOUP request and indeed in several respects present an even more compelling "good cause" for granting the intervenor's motion.

In *Firestone,* the intervenors were a private non-profit corporation whose members were composed of George Washington law students whose efforts to fight for the public interests the Commission applauded as serving the identical interests served by the Commission.[2] The SOUP intervenors noted that its members were all consumers, affected by deceptive advertising and directly affected by the "risks of personal and property damage due to drivers who believe the tires (made by respondents) are safer than they in fact are." One SOUP member was asserted to have seen the particular Firestone ad challenged in the complaint and to have made the purchase because of the safety features advertised. (Motion, p. 9)

In the instant case, the intervenors are three national consumer organizations, the Consumer Federation of America (with 200 consumer organization members representing 30 million consumers), the Consumers Union (with 300,000 members) and the Federation of Homemakers, Inc. (with 6,000 members). Together these intervenors represent more than 30 million people. Indirectly, they represent all members of the public whose interests will be adversely affected if the Commission fails to properly discharge its

---

[1] *In the Matter of The Firestone Tire & Rubber Company,* Dkt. 8818, Opinion of the Commission, October 23, 1970 [77 F.T.C. 1666, 1667].

[2] *In the Matter of The Firestone Tire & Rubber Company,* Dkt. 8818, Amended Motion of SOUP to Intervene and for Other Purposes, September 1, 1970.

statutory responsibilities to eliminate unfair and deceptive acts and practices.

These intervenors have a unique status as the three principal national consumer organizations in the country, with special expertise in all matters affecting consumers and with a unique status to speak for and promote the interests and consumers in this nation. Each has a long history of actions to protect and promote the interests of consumers throughout the country and each of whom has special expertise in the area of food and nutrition and health.

Like the SOUP intervenors, the three intervenors here claim that the individuals whom they represent are exposed to, react to and are motivated by advertising for which respondents are responsible. Their members include both parents who are concerned with physical and mental growth, development and health of their children as well as consumer of respondents' advertised products who like the SOUP intervenors, have a special interest in the truthfulness of respondents' advertisements and who would be aggrieved by a failure to adequately correct the false, misleading and deceptive impressions created by the challenged advertisements. Thus these petitioners contend they represent the very persons who have personally experienced the injury which respondents' challenged advertisements are alleged in this complaint to have visited on members of the consuming public.

In *Firestone*, the issue which intervenors wished to raise before the Commission involved the issue of the necessity for affirmative disclosure relief in a case that involves "a public safety danger," by reason of the fact that the challenged Firestone advertisements related to the safety and stopping characteristics of Firestone tires. The Commission stated that this was a "category of cases in which such relief may be especially appropriate," that this issue and this type of cases was high on its list of priorities and that it believed that "intervention in this case may contribute to a fuller appreciation of the need for stronger remedies generally in Commission cases." The Commission in *Firestone* stated that this issue respecting the adequacy of relief raised in cases involving public safety was of sufficient importance to warrant permitting intervention in order to assure itself of being adequately informed.

In the instant case, the intervenors wish to raise precisely the same issue of effective relief which the SOUP intervenors were permitted to raise in Firestone in a case in which the challenged

advertisements relate to the nutritional value and weight reduction properties of respondents' bread. Yet the Commission here would deny these intervenors the right to contribute to its knowledge in the exact area in which just 2 months ago it stated publicly it required more enlightenment.[3]

In *Firestone,* the Commission concluded that intervention in the adjudicatory proceedings for the limited purposes of offering evidence and arguments on the issue of the adequacy of the cease and desist order, exercising such discovery rights and presenting briefs and arguments as the examiner deemed reasonable and presenting oral argument to the Commission on appeal would "not unduly lengthen or complicate the case" nor prejudice the rights of respondents. In the instant case, the intervenors are simply seeking to be permitted to intervene as a party in the appellate stage of this proceeding to present oral argument and to file a brief. It is impossible to conclude that granting the instant intervention at the appeal stage of this case could in any way lengthen or complicate the case or prejudice the rights of respondents.

While in *Firestone* the Commission granted intervention over the opposition of its Bureau of Consumer Protection and counsel supporting the complaint, the instant intervention petition is urged by counsel supporting the complaint for several reasons. Counsel supporting the complaint point out that granting the instant petition will not cause any delay or interruption in the proceedings and is consistent with prior Commission action. Secondly, complaint counsel state that denial of this intervention would be inconsistent with complaint counsel's position that "the primary purpose of this proceeding was to protect the interests of consumers." Finally, in their view granting this intervention will promote "a thorough discussion of all issues prior to deciding the extremely important question presented by this case."

Nor is it of any significance, legal or policy wise, that the Commission carefully point out in *Firestone* that its decision thus was the beginning of "a delicate experiment" which should not be construed "as a permanent or irreversible policy decision" and that its grant or denial of such intervention motions "will have minimal, if not non-existent, precedential value." Whatever statements an agency makes with respect to the exercise of its discretion, it is clear that discretion must always be exercised fairly and non-dis-

[3] A majority of the Commission in Firestone refused to include a corrective advertising provision in the order because they did not believe they had enough information to enable them to determine whether it was necessary.

criminatorily. Agencies cannot pick and choose among intervenors which they like or dislike. Moreover, it is even clearer that actions proclaimed to be an exercise of discretion cannot be used to deny persons rights to which they are entitled. *American Communication Ass'n* v. *United States,* 298 F. 2d 648, 650 (2nd Cir. 1967) (reversal of FCC "discretionary of intervention")

The Commission has on several occasions indicated the importance of it to be informed directly by consumers themselves of their perception of their own interests rather than simply relying on its own expertise.[4] Indeed the Commission has on numerous occasions been compelled to remand or dismiss cases because its own counsel failed to support his burden of proof either on the threshold issue of liability or on the need for particular relief provisions contended for.[5] Here members of the consuming public, in whose interest the Commission purports to act, have indicated their desire to participate in proceedings in order to present their arguments to the Commission as to why in their judgment the law judge's dismissal of this complaint is in error. The issues to which the intervenors wish to address themselves are precisely the issues as to which the Commission has stated it desires to be fully informed about and that intervention requests are likely to be of valuable assistance to it. The Commission's refusal here to permit the intervention either casts serious doubt on the sincerity of its earlier pronouncements or is simply an arbitrary ad hominum refusal to hear these particular intervenors for reasons which the Commission refuses to disclose.

But there is an even broader legal and policy issue involved here in the Commission's action in this case. It is clear that any Commission decision finding that a violation of the law has occurred and that the entry of an order is required in the public interest is reviewable. However, this situation for all practical purposes does not occur when the Commission concludes that a violation of law has not occurred or that the entry of an order is not required in the public interest. Nor is there any review of the adequacy of a Commission order except by the respondent against whom it is entered. Yet members of the public adversely affected by

---

[4] *In re Firestone Tire & Rubber Co., Dkt. 8818,* Opinion of the Commission, September 22, 1972 [81 F.T.C. 398, 441]. *In Re D. L. Blair Corporation,* Dkt. 8837, Opinion of the Commission, January 22, 1973 [p. 252 herein].

[5] E.g. *FTC* v. *Pfizer, Inc.,* Dkt. 8819, Opinion of the Commission, July 11, 1972 [81 F.T.C. 23, 56] *In re Firestone, supra; National Dynamics,* Dkt. 8803, Opinion of the Commission [p. 546 herein].

Commission actions are no less potential victims of erroneous Commission action as respondents.

Clearly the possibility exists equally that the Commission can as easily err in its findings and conclusions that the public interest does not require an order as it can err in its conclusions that an order *is* required. If the Commission should act in a way which is contrary to the public interest there is no recourse available to the public to secure a review or reversal of its actions. Certainly the Commission can not be heard to argue that it has any greater expertise in determining where the public interest *does not* require an order than it has in determining when the public interest *does* require an order. Yet the latter determinations are presently reviewable whereas the former in the absence of intervention are not. Nor can I conceive of any public policy which would dictate that the Commission's expertise is such that its judgment concluding that the public interest requires an order *should* be reviewable but that its contrary judgment is somehow less fallible and should *not* be reviewed.

Indeed petitioners argue that as persons who can be adversely affected by Commission orders they enjoy a right of judicial review of Commission orders irrespective of whether or not they are permitted to intervene. If this is a correct statement of the law, then even more so should this Commission grant them the right to intervene. It is to me intolerable—and could only be productive of unnecessary delay—to refuse to hear the arguments of persons who may be aggrieved by a Commission order and force them instead to present their arguments to a reviewing court which if they prove to be right would be forced to remand the case to the Commission. Certainly the Commission should not deprive itself of the opportunity to consider such views in reaching its initial decision. By the same token a reviewing court would be in a far better position to evaluate such petitioner's arguments if they had been presented first to the Commission and the court had before it the benefit of the Commission's view of them.

Some might argue that indiscriminate permitting intervenors to participate in Commission proceedings or seek judicial review of Commission orders which they felt adversely affected their interests would play havoc with the Commission's priorities or its decision with respect to the best use of its scarce priorities. I do not believe that this is a realistic fear. Presumably intervention petitions will be filed only in those proceedings in which issues of central concern to the public issues are at stake. Even if this is not

the case, the Commission remains at all times intially in control of the grant or denial of these petitions. If it has a valid reason for denying an intervention petition on its merits, presumably such a decision would receive respectful consideration by any reviewing court. But its reasons must be rational and meritorious and in fact grounded on valid consideration of delay or undue burden on its resources or patent invalidity of the basis asserted in support of the intervention request. Certainly the instant request for intervention can in no way impose any burden on the Commission nor affect in any way the Commission's priorities or its decisions. The case has already been adjudicated. Appeal has already been filed with the Commission. Should the intervenors ultimately disagree with the Commission's decision—and determine to appeal—the Commission need take no action at all. It can simply rely on its opinion and leave to the intervenors to attempt to convince the reviewing court of its error.

An *amicus curiae* brief in no way resolves the basic issue presented by this petition for intervention. That issue is a simple one and goes to the single question of whether persons adversely affected by Commission action have a *right* to intervene or whether they must depend on the whim of the Commission as to whether it will or will not hear their argument. I am convinced that both the law and the dictates of sound policy require the Commission to grant petitions to intervene when the intervenors can demonstrate that they have a genuine interest in the action which may be adversely affected by the Commission's action.

SEPARATE STATEMENT

BY DIXON, *Commissioner:*

As noted by the numerous citations in the dissent, the dissenting Commissioner places complete reliance on our decision in *Firestone.* However, throughout nine pages of dissent, our dissenting Commissioner completely ignores the one indispensable distinction between this case and *Firestone.* In the *Firestone* case there was no allegation in the complaint which would support what the dissenting Commissioner refers to as a "corrective advertising" provision in the order, nor was there such a provision in the proposed order, and thus there was no attempt by complaint counsel to support such a provision. This is the only reason that I voted to permit S.O.U.P. its limited intervention. In this matter, the issue was fully

presented by complaint counsel, was fully tried, and was squarely before the administrative law judge.

The Commission is charged by Congress with the duty of protecting the public interest. The Commission is capable of performing this duty on the record before us. I have no objection to permitting the consumer groups to file an *amicus curiae* brief which may assist us in reaching a decision. However, to allow intervention for the only purpose of permitting the consumer groups to appeal from an adverse decision, which is the stated purpose of their petition, is to concede that the Commission is not capable of performing its Congressional mandate. While the dissenting Commissioner seems to have made this concession, I have not.

The dissenting Commissioner states that she cannot "conceive of any public policy which would dictate that the Commission's expertise is such that its judgment concluding that the public interest requires an order *should* be reviewable but that its contrary judgment is somehow less fallible and should not be reviewed." While this statement is obviously intended to be in derogation of the majority decision, it merely reflects a misconception. It is not the Commission which determined that an adverse decision to a respondent should be reviewable. It was the Congress. It was also the Congress which, by not providing for review of an order of dismissal, determined that the Commission was fully capable of making its decisions in the public interest.

In the last sentence on page 8 [p. 705 herein] of the dissent, the dissenting Commissioner seems to be setting forth her standards for a Commission decision for denial of intervention. In particular, she cites the "patent invalidity of the basis asserted in support of the intervention request." If we rely on the dissenting Commissioner's reasons for granting this particular request, *i.e.*, that the individuals represented by movants "are exposed to, react to, and are motivated by advertising for which respondents are responsible," there are very few persons who could be denied intervention. And to argue that it is not a "realistic fear" that such persons would petition for intervention once it is allowed in a case such as this, is only to express one's personal opinion. In my personal opinion, to permit intervention on the basis of the assertions of the movants in this matter is to open the door for intervention in any matter by practically any consumer and thereby "play havoc" with Commission priorities. More importantly, as appears to be urged by the dissenting Commissioner, we would be abdicating our responsibility to act in the public interest.

Finally, the dissent relies on the fact that complaint counsel urged approval of the petition for intervention. Faced with the fact that complaint counsel lost the "corrective advertising" issue before the administrative law judge, this is hardly grounds for permitting intervention in support of his position.

ORDER (1) DENYING MOTION TO INTERVENE, AND (2) GRANTING PERMISSION TO FILE AMICUS BRIEF AND PRESENT ORAL ARGUMENT

This matter is before the Commission upon motion of Consumers Federation of America, Consumers Union of the United States, Inc., and Federation of Homemakers, Inc., to intervene as parties supporting the complaint filed January 5, 1973. In an initial decision dated December 18, 1972, the administrative law judge ordered that the complaint herein be dismissed. On January 2, 1973, complaint counsel filed a notice of appeal from the initial decision.

Movants do not seek to reopen the hearing, adduce new evidence or enlarge the record. Their request for intervention is limited to a request for permission to file a brief and present their position in the oral argument before the Commission. It is apparent that their arguments can be presented effectively by way of an *amicus curiae* presentation. *See In the Matter of Kennecott Copper Corporation,* Docket No. 8765 (Orders of June 15, 1970; August 28, 1970; December 18, 1970); and *Firestone,* Docket No. 8818 (Opinion and Order of October 23, 1970 [77 F.T.C. 1666, 1667]). Consequently, the Commission sees no reason at the present time to grant the motion for intervention.

The Commission notes that the moving parties here have sought intervention for the purpose of preserving their alleged right to appeal as persons who may be "adversely affected" or "aggrieved" by a Commission order under 5 U.S.C. § 702 (1970).[1] If the would-be intervenors can convince a court to assume jurisdiction under this section, then they are entitled to judicial review without having been made a party to the proceeding before the Commission. The question of the reviewability of Commission orders is, however, a matter properly to be determined by the courts; and our designation of movants as *amicus curiae* is not to be interpreted as an indication one way or the other of the Commission's view of the merits of the reviewability question.

The motion to intervene as a party is denied. However, movants are granted permission to file an *amicus* brief not to exceed 90

[1] A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. 5 U.S.C. § 702 (1970).

typewritten pages and to participate in the oral argument before the Commission.

Commissioner Jones dissenting and Commissioner Dixon filing a separate statement.

IN THE MATTER OF

SUCCESS MOTIVATION INSTITUTE, INC., ET AL.

Docket C-1768. Order, Feb. 16, 1973.

Order denying respondents' petition to reopen the proceeding for the purpose of modifying Paragraph 4 of the order to cease and desist to permit compilation of required information only with respect to "full-time active" franchisees; reopening the proceeding for the purpose of modifying Paragraph 4 of the order to cease and desist; and modifying Paragraph 4 of the order to read as set forth.

ORDER

This matter is before the Commission on a petition to reopen filed on November 24, 1972, by Success Motivation Institute, Inc. and Paul J. Meyer pursuant to Section 3.72 (b) (2) of the Commission's Rules of Practice. Petitioners claim that changed conditions of fact and considerations of the public interest require that the order to cease and desist entered against them on July 14, 1970 [77 F.T.C. 943, 946], be altered and modified. The petition relates to Paragraph 4 of said order which requires disclosure of statistical information to prospective franchisees and distributors of petitioners. Specifically, the petition requests (1) that the requirement that information be compiled on a calendar year basis be modified to permit compilation on a fiscal year basis, and (2) that the requirement that information be compiled with respect to all franchisees and distributors be modified to permit compilation only with respect to "full-time active" franchisees and distributors. The Acting Director of the Bureau of Consumer Protection has filed an answer opposing only the second requested modification.

Upon consideration of the grounds given in support of the first modification sought by petitioners it would appear that the requirement that information be compiled on a calendar year basis would be unduly burdensome and that the modification requested would not effect a significant change in the order.

With respect to the second requested modification, petitioners allege that, unless notified, they have no way of knowing when a

franchisee or distributor may become inactive. They further allege that, as a consequence, the data required to be disclosed by subparagraphs 4(a) and 4(b) of the order is distorted by the inclusion of such inactive distributors.

The Commission finds petitioners' contention to be wholly without merit. The purpose of the order provisions under consideration is to prevent misrepresentations as to the probabilty of a prospective franchisee achieving success in the distribution of petitioners' product, including representations that petitioners' franchisees are uniformly successful and all enjoy substantial incomes from their distributorship. Elimination of all but full-time active franchisees from a statistical summary showing median and mean gross sales to franchisees and distributors and the turnover in such distributors would defeat this purpose.

For the foregoing reason, the Commission is of the opinion that petitioners have failed to establish that changed conditions of fact or law or public interest considerations warrant reopening of this proceeding for the purpose of altering or modifying the order to cease and desist to allow the data required to be disclosed to prospective franchisees and distributors by subparagraphs 4 (a) and 4(b) to be computed on the basis of "full-time active" franchisees and distributors only. The Commission has determined, however, that Paragraph 4 of the order should be modified by changing "calendar year" to "fiscal year" and that it would be in the public interest to reopen the proceeding for that purpose.

Accordingly, it is ordered, That petitioners' request that the proceeding be reopened for the purpose of modifying Paragraph 4 of the order to permit compilation of required information only with respect to "full-time active" franchisees and distributors be, and it hereby is, denied.

It is further ordered, That this proceeding be reopened for the purpose of modifying Paragraph 4 of the order to cease and desist to permit compilation on a fiscal year basis of the information required to be disclosed thereby.

It is further ordered, That Paragraph 4 of the order to cease and desist in this matter be, and hereby is, modified to read as follows:

(4) Failing to furnish to prospective franchisees or distributors reasonably prior to such persons agreeing to become franchisees or distributors, a written tabulation or statistical summary showing, on an accumulative and com-

parative basis for each fiscal year, beginning with the fiscal year 1966, for each of the corporate respondents' operating divisions the following information:

(a) The median and mean gross sales to respondents' franchisees or distributors exclusive of initial inventories sold to new franchisees or distributors during the fiscal year.

(b) The number of franchisees or distributors at the beginning of the fiscal year, the number appointed during the year, the number terminated during the year, the number retained at the end of the year, and the length of time that those retained at the end of the year have been respondents' franchisees or distributors.

(c) The foregoing information shall be tabulated as a running 4 years analysis so that prospective franchisees or distributors will be furnished such information for the 4 fiscal years immediately preceding the year in which the information is to be furnished; *Provided,* That, the information for the fiscal year most recently completed prior to the year in which the information is to be furnished will be made available within 45 days of the close of that fiscal year.

IN THE MATTER OF

CONSOLIDATED SYSTEMS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8867. Complaint, Oct. 19, 1971—Decision, Feb. 22, 1973.

Consent order requiring a Wawaka, Indiana, correspondence and in-residence school for truck driver training, among other things to cease misrepresenting the nature of their business; representing offers of employment when the real purpose is to obtain prospective purchasers of their training course; misrepresenting respondents' connections or affiliation with the trucking industry; misrepresenting the quality or nature of equipment available; misrepresenting the content, completeness or effect of any of respondents' courses; misrepresenting the terms and conditions under which payment for courses may be made; and guaranteeing employment to graduates of their courses. Respondents are further re-

quired to provide each prospective purchaser a copy of a letter explaining what chance a graduate has of finding a job.

The complaint was withdrawn with respect to two former officers of the corporation due to their entering a consent settlement in a collateral matter.

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 Consolidated Systems, Inc., a corporation, and Allen Driscoll, individually and as an officer of said corporation, and Tom Johnson and J. C. Triplett, individually and as former officers 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 Consolidated Systems, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 2102 E. 52nd Street, Indianapolis, Indiana.

Respondent Allen Driscoll is an individual and officer of said corporation. He formulates, directs and controls the policies, 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.

Respondent Tom Johnson is an individual and was formerly an officer of said corporation. He formulated, directed and controlled the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 2024 W. Moray Court, Indianapolis, Indiana.

Respondent J. C. Triplett is an individual and was formerly an officer of said corporation. He formulated, directed and controlled the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 103 Rockshire Road, Indianapolis, Indiana.

The respondents, herein, have in the past, cooperated and acted together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and have been for some time last past, engaged in the advertising, offering for sale, sale and

distribution of courses of study and instruction purporting to prepare graduates thereof for employment as truck drivers. Said courses consist of a series of lessons pursued by correspondence through the United States mails and a period of in-residence training at a place designated by respondents.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, the correspondence portion of their courses, when sold, to be sent from respondents' place of business in the State of Indiana to purchasers thereof located in various other States of the United States. Respondents utilize the services of salesmen who induce prospective purchasers of respondents' courses located in states other than the State of Indiana to call on said salesmen at respondents' offices. Said salesmen transmit to and receive from respondents contracts, checks and other instruments of a commercial nature. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said courses of study and 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 obtaining leads to prospective purchasers of their courses, respondents have published or caused to be published in the "Help-Wanted" and other columns of newspapers advertisements containing statements and representations regarding job opportunities, training and wages for persons interested in becoming truck drivers. Typical and illustrative, but not all inclusive of such advertisements is the following:

SEMI DRIVERS NEEDED

Over age 21, Married or Single, good physical condition, some experience or willing to learn to earn high wages driving Semi Tractor Trailers, Local or Over the Road. Midwest, Mideast and Southern areas. For application write c/o Trucks, P.O. Box 40456, Indianapolis, Ind., 46205, or call (317) 784-1348.

PAR. 5. By and through the use of the statements and representations contained in the advertisement set forth in Paragraph Four and others of similar import and meanings but not expressly set out herein, respondents represent, directly or by implication, that:

1. Consolidated Systems, Inc., is a trucking company.

2. Respondents are offering employment to qualified applicants who will be trained as truck drivers.

PAR. 6. In truth and in fact:

1. Consolidated Systems, Inc., was not and is not a trucking company.

2. Respondents do not offer employment to persons who will be trained as truck drivers. The real purpose of such advertisement is to obtain leads to prospective purchasers of respondents' courses of study and instruction.

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

PAR. 7. In the further course and conduct of their business as aforesaid, respondents cause persons who respond to advertisements seeking leads to prospective purchasers to visit respondents' salesmen at respondents' offices. For the purpose of inducing the sale of respondents' courses, such salesmen make to prospective purchasers many statements and representations, direct and by implication, regrading opportunities for employment as truck drivers available to purchasers of respondents' courses, the assistance furnished to respondents' graduates in obtaining employment and other matters. Some of the aforesaid statements and representations appear in brochures, pamphlets and other printed material furnished to said salesmen by respondents and other statements and representations are made orally by said salesmen. Among and typical, but not inclusive, of such statements and representations are the following:

1. Respondents have been requested by trucking companies to train drivers, and, therefore, employment as a truck driver is assured to persons completing respondents' course.

2. Respondents are connected or affiliated with the Consolidated Freightways Corporation.

3. Respondents operate and maintain school facilities, and that respondents provide training and instruction for prospective truck drivers at these school facilities.

4. Respondents will train enrollees on the best and most up-to-date trucks and auxiliary equipment available in the trucking industry.

5. Persons completing respondents' course will thereby be qualified for employment as local or over-the-road truck drivers without further training or experience.