

Appearances

For the Commission: *James T. Halverson.*

For the respondent: *J. Wallace Adair, Howrey, Simon, Baker & Murchison, Wash., D.C.*

ORDER REOPENING PROCEEDING AND MODIFYING DIVESTITURE
ORDER

This matter is before the Commission on a petition filed by respondent American Cyanamid Company on Dec. 20, 1974, requesting that the proceeding in the above-captioned matter be reopened for the purpose of modifying the order of divestiture issued therein on Apr. 16, 1973, so as to relieve respondent of any further obligation to divest its plant located in Moosic, Pa.

In support of this request respondent alleges that the principal purpose of the divestiture provisions of the aforesaid Commission order has already been accomplished by respondent's sale of two lines of men's toiletries on Apr. 1, 1974; that the plant in question was never used to produce these two product lines; and that the plant is presently an unoccupied, nonproductive facility. The director of the Bureau of Competition has filed an answer to the petition advising that he does not oppose the granting of the relief requested.

Having considered the petition and the answer thereto, the Commission is of the opinion that in the circumstances shown to exist the public interest will be served by reopening this proceeding for the purpose of modifying the order to the limited extent requested. Accordingly,

It is ordered, That this proceeding be, and it hereby is, reopened, and that the Commission's order of Apr. 16, 1973, be, and it hereby is, modified by striking from Part I thereof the requirement that respondent divest itself of the plant located in Moosic, Pa.

IN THE MATTER OF

FUQUA INDUSTRIES, INC., ET AL.

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

Docket C-2626. Complaint, Jan. 21, 1975 - Decision, Jan. 21, 1975

Consent order requiring an Atlanta, Ga., vocational school operator and franchisor, among other things to refund up to \$1.25 million to eligible former students; and requiring a St. Petersburg, Fla., vocational school operator and franchisor,

Complaint

85 F.T.C.

among other things to disclose designated information such as drop-out rates and positions and salaries received by graduates; to allow enrollees a 10-day period in which to affirm their enrollment contracts, with cancellation of contract; and to provide prospective franchisees with full particulars on the franchise operation in writing.

Appearances

For the Commission: *Charles L. Hall, Morgan D. Hodgson and Donald Williams.*

For the respondents: *Kirkland, Ellis & Rowe, and Arent, Fox, Kintner, Plotkin & Kahn, Wash., D.C.*

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 Fuqua Industries, Inc., a corporation, Space/Time, Inc., a corporation, Nationwide Acceptance Corporation, a corporation, Fortune Enterprises, Inc., a corporation, and William L. Phillips, individually and as an officer and director of Fortune Enterprises, Inc., 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 Fuqua Industries, Inc. (hereinafter sometimes referred to as F/I) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3800 First National Bank Tower, in the city of Atlanta, State of Georgia.

Respondent Space/Time, Inc., (hereinafter sometimes referred to as S/T) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3800 First National Bank Tower, in the city of Atlanta, State of Georgia. All the stock of Space/Time, Inc. is owned by Fuqua Industries, Inc. Respondent S/T is now and for sometime last past has been, an advertising agency for wholly-owned subsidiaries of respondent F/I, and for sometime last past, has caused publication and dissemination of advertising material, including, but not limited to, the advertising referred to herein, to promote the sale of vocational courses of instruction.

Respondent Nationwide Acceptance Corporation (hereinafter sometimes referred to as NAC) is a corporation organized, existing and doing business under and by virtue of the laws of the State of

Delaware, with its principal office and place of business located at 3800 First National Bank Tower, in the city of Atlanta, State of Georgia. All the stock of Nationwide Acceptance Corporation is owned by Fuqua Industries, Inc. Respondent NAC is now and for sometime last past has been, a holder of commercial paper and a collection agency for respondent F/I.

Respondent F/I formulates, directs and controls the acts and practices of its said wholly-owned subsidiaries, including the acts and practices hereinafter set forth, and performed in same manner with respect to Career Enterprises, Inc. (hereinafter sometimes referred to as CE) a corporation respondent wholly-owned from June 1969 to December 1971. With respect to the acts and practices of Career Enterprises, Inc. hereinafter set forth, respondent F/I knew or should have known of the said acts and practices and failed to exercise its control to curb the said acts and practices. Alternatively, with respect to the acts and practices of Career Enterprises, Inc. hereinafter set forth, respondent F/I upon acquisition and thereafter failed to investigate the said acts and practices and, thus, failed to exercise its control to curb the said acts and practices. In Dec. 1971 CE was sold by respondent F/I to Fortune Enterprises, Inc.

Respondent Fortune Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its principal office and place of business located at 2951 34th Street South, in the city of St. Petersburg, State of Florida.

Respondent William L. Phillips is founder, president and sole stockholder of Fortune Enterprises, Inc., and was founder, director and chief executive officer of CE. Phillips formulates, directs and controls the acts and practices of Fortune Enterprises Inc., including the acts and practices hereinafter set forth, and performed in the same manner with respect to CE. Phillips and Fortune Enterprises, Inc. have the same business address.

PAR. 2. Through CE, respondents have for some time last past engaged in the formulation, development, offering for sale, sale and distribution of courses of instruction intended to prepare graduates thereof for entry-level employment in the following positions: computer programmers, keypunch operators, cashier-checkers, PBX receptionists, secretaries, medical and paramedical personnel, nurses' aides and laboratory technicians. Respondents' volume of business in said courses of instruction was substantial.

Such business was conducted by respondents by establishing company owned branch facilities which offered resident instruction in the aforesaid courses and by selling franchises to other individuals,

corporations or partnerships to operate facilities offering resident instruction in the aforesaid courses.

Respondents' branch facilities and franchised facilities offered said courses to the general public under various trade names owned and authorized for use by respondents as follows: Career Training Institute (CTI); Career Training Center (CTC); Cashier Training Institute (CTI); Key punch Academy (KPA); and (name of city) Business Institute. Additionally, respondents entered into a management-sales contract whereby training facilities were established by respondents to offer courses in medical, paramedical, nurses' aide and laboratory technician training, and designated Medical Training Centers (MTC), and thereafter sold to a third party, reserving management rights and fees to respondents for the continued operation of such facilities.

Respondents furnished the means and instrumentalities for, and placed into operation and implemented themselves, a sales program whereby members of the general public, by means of advertisements placed in broadcast and printed media of general circulation, by promotional brochures, and by means of training and supplying personnel in the operation and management of said training facilities, and by means of statements, representations, acts and practices as hereinafter set forth, were induced to sign contracts of enrollment agreements for a course of instruction of a stated length of time and for a stated tuition cost, or induced to sign contracts to purchase franchises from CE.

Respondents arranged or assisted in the arrangement of credit and deferred payment terms for the financing of said executed contracts and accepted the proceeds and revenues following therefrom or derived substantial income therefrom in the form of royalty payments from said enrollment contracts, franchise contracts and management-sales contracts.

In the manner aforesaid, respondents dominated, controlled, furnished the means, instrumentalities, services and facilities for, and condoned, approved, and accepted the pecuniary and other benefits following from the acts and practices hereinafter set forth of respondents' company branch facilities and franchisees.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents for some time last past caused said aforementioned courses of instruction to be distributed from CE's place of business to said aforementioned branch facilities and franchisees located in various States of the United States other than the state of organization of said courses. Respondents transmitted and received and caused to be transmitted and received, in the course of the sale of, distribution of and financing of their courses of instruction by said company facilities

and franchisees among and between the several States of the United States, retail installment contracts, credit applications, checks, royalty reports, monies or other commercial paper. Respondents maintained at all times mentioned herein a substantial course of trade in said courses of instruction and said franchises in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and to induce the purchase of their courses of instruction by members of the general public, respondents and their company branch facilities and franchisees and the salespersons at the branch facilities and franchisees have disseminated or caused the dissemination of, via the United States' mails or other means, radio, television, newspaper, print media, or other forms of advertising, or other means and instrumentalities which are furnished, approved or condoned by respondents. In the further course and conduct of their business, as aforesaid, respondents have caused advertisements to be published in the "Help Wanted" columns of daily newspapers' classified advertising sections. In conjunction therewith, respondents and their company facilities and franchisees have made certain statements and representations respecting the existence of specific jobs in which graduates of respondents' training facilities will be placed upon completion of training, the offering of immediate or eventual employment of qualified applicants, the existence of a substantial demand for persons possessing the skills which are taught at respondents' training facilities, the time required to successfully complete respondents' courses, the nature of placement services offered, the offering of a vocational training program specially designed for known employment requirements and the offering of a financial plan of deferred tuition payments until after completion of training.

In further course and conduct of their business, respondents operated a sales plan to market their courses of instruction by enfranchising persons to sell such courses under an "Agreement and Franchise" purporting to assign a particular location in which the franchisee could sell one or more of the aforesaid courses of instruction to members of the public.

For the purpose of inducing the purchase of CE franchises, respondents have made statements and representations in oral sales presentations to prospective purchasers and in newspaper advertisements and promotional literature respecting the aforesaid courses of instruction, the earnings and profits to be realized by selling such courses, the training or business opportunity for absentee-management arrangements, and the demand for skills taught by respondents branch facilities and franchisees.

Typical of the statements and representations in said advertisements, but not all inclusive thereof, are the following:

A. Radio and Television

Hey, men and women of BLANK and surrounding area, are you untrained or unemployed? Medical Training Centers are now selecting many, many nurses and trainees. * * * The first 23 people who qualify will start immediately. That's right - I said immediately.

* * * * *

* * * You need no high school diploma or experience, and there's no age limit. Don't wait. Start getting the big money and the fringe benefits and job security that only an IBM career brings.

* * * * *

Attention men and women of Grand Rapids and surrounding areas - there is now a shortage of trained personnel in the IBM field. Key punch Academy is now accepting applications for a special training program designed especially to fill these positions. * * * contact us immediately * * * call now and be job ready after a short training period.

* * * * *

Because of the tremendous need for trained IBM keypunch operators in the computer industry, (name of school) is now offering women and men in (city) and surrounding areas an opportunity to be trained * * *.

* * * * *

* * * CTI is now interviewing people to be IBM keypunch trainees. The people selected will be trained on the latest equipment and methods available * * *.

* * * * *

Need a job fast? People in (city) and surrounding areas, CTI now needs men and women to be IBM keypunch trainees.

* * * * *

Attention men and women of Grand Rapids and surrounding areas - there is now a shortage of trained personnel in the IBM field. Key punch Academy is now accepting applications for a special training program designed especially to fill these positions.

B. Newspaper

NEEDED NOW! Wanted Immediately - Keypunch trainees. No experience necessary, no age limit. We will train sharp individuals.

* * * * *

MALE ORDERLY Trainees needed for Nashville area. Training to start immediately * * *.

Complaint

CALL

254-7514

Medical Training Center.

* * * * *

NURSES ASSISTANT

MALE ORDERLY

After a short training period a future prestige job awaits you in the medical field.

* * * * *

NEEDED NOW

Trainees needed in Hospitals, Clinics, Nursing Homes and in Doctor's offices in the Nashville area * * * Free job placement service assistance. Student loans available.

* * * * *

JOB OPPORTUNITIES

UNLIMITED

* * * * *

\$ HELP \$

We need ladies immediately to be trained on our latest equipment and methods as keypunch trainees.

* * * * *

* * *CTI offers intensive *individualized* instruction especially designed for you.

* * * * *

START A NEW CAREER NOW

BE JOB READY IN 8-10 WKS

* * *must be willing to start work immediately.

* * * * *

* * *FREE placement service . . .TRAIN NOW - PAY LATER * * *

* * * * *

IBM KEYPUNCH TRAINEES

Immediate openings, no age or educational requirements, we will train. Call 436-9225 NOW.

Complaint

85 F.T.C.

* * * * *

NURSES AIDES

CTI is now selecting 30 nurses aid trainees for the Akron area. WE TRAIN YOU* * *

* * * * *

KEYPUNCH ACADEMY

ATTENTION! ATTENTION!

Men and Women in the Topeka and surrounding areas, KPA now needs thirty (30) people to train to be Keypunch Operators. . . If you don't have a job or you are tired of your present job, call 233-6494 to see if you qualify for one of these training positions* * *

* * * * *

KEYPUNCH OPERATOR

High School not required. No age limit. 542-7494

* * * * *

TRAIN NOW FOR GOOD

PAYING JOB OPPORTUNITIES

IN IBM KEYPUNCH . COMPUTER

PROGRAMMING.

Classes are limited. Individual Instruction.

* * * * *

HIGH SCHOOL SENIORS

OVER 260 IMMED. OPENINGS.

High school grads willing to train in a computer career. Salaries to \$145 per wk. Call Mr. Storke 654-8866, 305 W. 12 St.

* * * * *

Complaint

LIFETIME OPPORTUNITY

Own your own franchise in the
world's fastest growing business.

* Depression Proof

* Turn Key Operation

* Ideal for Husband? Wife Team

* Absentee Management Available

* Protected Franchise Area

* Minimum Cash Needed \$10,000

* Net \$10,000 to \$40,000 Per Year

Write or Call

B.A. HUTTER, V-P

CAREER

ENTERPRISES, INC.

C. Promotional Brochure

Here let us take a moment to comment upon the aspects of our advertisement which prompted your welcome query. We indicated that your first year of operation with us could produce a significant income ranging from \$15,000 to \$50,000. We mean just that, and these are net profit figures. The secret to our success is "low overhead, coupled with volume activity." This is not merely an idle claim. We have available for your inspection, certified figures on our own as well as our franchised schools. These figures reflect annual gross sales, operating costs, and net profit. Enclosed as part of this informational packet you will find information and recent figures applicable to representative schools within our system. A review of this information will readily reveal how your initial investment can be returned to you in just a few short months. This can not be said of any other business known to us.

First let us say that our offering is exactly as presented. The advertisement which prompted your query contains only true and correct details. Imagine if you will hundreds of training facilities located throughout the country, half of which are owned and operated by us, the other half operated under our franchise.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, respondents and their company facilities and franchisees and the salespersons of the company facilities and franchisees have represented directly or by implication, that:

1. Inquiries are being solicited for the purpose of offering immediate training to qualified applicants who will be employed after the completion of said training.
2. Inquiries are being solicited for the purpose of offering

immediate employment to qualified applicants, who will be provided with on-the-job training.

3. Respondents have knowledge of specific jobs in which their graduates will be placed upon completion of training.

4. Respondents had a reasonable basis from which to conclude that:

(a) there was at the time such representations were made, or

(b) would be at the time that persons then enrolling graduated from respondents' courses

an urgent need or demand for all or most of respondents' graduates in positions for which respondents trained such persons.

5. A purchaser will complete respondents' courses within the specified course duration advertised for said courses.

6. The placement assistance furnished by respondents is free.

7. Placement assistance is furnished to all graduates of respondents' courses who seek placement;

8. Respondents furnish individualized training or instruction.

9. Respondents offer a vocational training program which is specially designed to qualify graduates for the employment requirements known to be existing in the local community.

10. Respondents make available to purchasers of their courses of instruction a finance plan whereby all tuition payments may be deferred until after completion of training,

11. Respondents' graduates who seek employment in the positions for which respondents have trained them do not find it necessary, in many instances, to seek said employment through sources other than respondents' placement office.

12. Graduates of respondents' courses are presently being hired by certain local business entities.

13. Graduates of respondents' courses are guaranteed a job through respondents' placement office.

14. A purchaser of respondents' courses will receive a full refund of his "reservation fee" if he decides to cancel before beginning classes.

15. Certain of respondents' training facilities have standing contractual agreements with local business entities whereby said entities agree to employ the graduates of said facilities.

16. Respondents will place students in part-time employment positions during the time that such students are enrolled in respondents' courses of instruction.

17. Respondents' courses are approved by the appropriate government agency for veterans' educational assistance benefits from the United States Government.

PAR. 6. In truth and in fact:

1. Inquiries are not solicited for the purpose of offering immediate

training to qualified applicants who will be employed after the completion of said training, but are solicited for the sole purpose of obtaining leads to prospective purchasers of respondents' courses of instruction.

2. Inquiries are not solicited for the purpose of offering immediate employment to qualified applicants, who will be provided with on-the-job training, but are solicited for the sole purpose of obtaining leads to prospective purchasers of respondents' courses of instruction.

3. Respondents do not have knowledge of specific jobs in which their graduates will be placed upon completion of training.

4. Respondents had no reasonable basis from which to conclude that:

(a) there was at the time such representations were made, or

(b) would be at the time that persons then enrolling graduated from respondents' courses,

an urgent need or demand for all or most of respondents' graduates in positions for which respondents trained such persons;

5. In a substantial number of instances purchasers of respondents' courses do not complete said courses within the specified course duration advertised for said courses.

6. The placement assistance furnished by respondents is not free, but rather included in the tuition cost of respondents courses.

7. Placement assistance is not furnished to all of respondents' graduates who seek placement.

8. Respondents do not furnish individualized training or instruction, but rather furnish group classroom instruction.

9. Respondents do not offer a vocational training program which is specially designed to qualify graduates for the employment requirements known to be existing in the local community, but rather offer a standardized curriculum.

10. Respondents do not make available to purchasers of their courses of instruction a finance plan whereby all tuition payments may be deferred until after completion of training. The terms of respondents' finance plan require that tuition be paid in installments during the scheduled duration of the course, with the last installment due before the scheduled completion of the course.

11. Respondents' graduates who seek employment in the positions for which respondents have trained them do find it necessary, in many instances, to seek said employment through sources other than respondents' placement office.

12. In a substantial number of instances, the aforementioned certain local business entities were not hiring respondents' graduates

at the time that the representation was made that graduates were being hired.

13. Graduates of respondents' courses are not guaranteed a job through respondents' placement office.

14. In many instances a purchaser of respondents' courses does not receive a full refund of his "reservation fee" if he decides to cancel before beginning classes.

15. Respondents' training facilities do not have standing contractual agreements with local business entities whereby said entities agree to employ the graduates of said facilities.

16. In a substantial number of instances, respondents do not place students in part-time employment positions during the time that such students are enrolled in respondents' courses of instruction.

17. In a substantial number of instances, respondents' courses were not approved by the appropriate government agency for veterans' educational assistance benefits from the United States Government at the time that such approval was represented.

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

PAR. 7. In the further course and conduct of their business, as aforesaid, respondents have placed or caused to be placed advertisements seeking purchasers for their courses of instruction in the "Help Wanted" or "Employment" columns of daily newspapers' classified advertising sections, thereby inducing members of the general public to believe that respondents are offering paid employment and not merely training for which the purchaser must pay. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 8. In the further course and conduct of their business, and in furtherance of their purpose of inducing the purchase of their courses by the general public, respondents acting directly through their company owned training facilities and furnishing the means and instrumentalities to their franchisees, directly or indirectly have engaged in the following additional acts or practices:

(a) Respondents have induced members of the general public to sign certain contracts entitled "Application." Respondents thereby have deceptively and misleadingly created the impression that said documents are not legally binding contractual agreements, when in fact said documents are legally binding contractual agreements.

Therefore, respondents' statements, representations, acts or practices as set forth herein were, and are, false, misleading, unfair or deceptive acts or practices.

PAR. 9. Through the use of the aforesaid advertisements and otherwise, respondents have represented, directly or by implication, that there was at the time of the representation, or would be at the time of graduation from respondents' courses, an urgent need or demand for respondents' graduates in positions for which respondents train such persons. At the time of the said representations respondents had no reasonable basis adequate to support such representation. Therefore, the aforesaid acts and practices were, and are, unfair acts or practices.

PAR. 10. Respondents have created an organization named National Career Educational Accrediting Association of Washington, D.C. (NCEAA) and have held out and represented that their company training facilities and franchisees are accredited by said organization, when in fact said organization has no standing as an independent, nationally recognized accrediting association. Respondents have thereby deceived and misled and furnished the means and instrumentalities to others to deceive and mislead the general public into believing that respondents' said company training facilities and franchisees are accredited institutions, and have induced enrollments in said company facilities and franchisees by reliance thereon. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 11. Respondents offered for sale courses of instruction in computer programming which required that students enrolled therein complete a certain amount of operating time on computer equipment without disclosing in advertising or through their sales representatives that respondents' training facilities did not contain all of the equipment necessary to instruct said students, and that said students must pay for the cost of transportation themselves between respondents' facilities and the location of the necessary equipment. Knowledge of such facts would indicate the full cost and time requirements of enrolling in said courses. Thus, respondents have failed to disclose a material fact, which if known to certain consumers would be likely to affect their consideration of whether or not to purchase said courses of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 12. Respondents offered for sale courses of instruction intended to prepare graduates thereof for entry level employment as computer programmers, keypunch operators, cashier-checkers, PBX receptionists, secretaries, medical and paramedical personnel, nurses' aides and laboratory technicians without disclosing in advertising or through their sales representatives: (1) the percentage of recent graduates of each school for each course offered that were able to obtain

employment in the positions for which they were trained; (2) the employers that hired any such recent graduates for each course offered; (3) the initial salary any such recent graduate received for each course offered; and (4) the percentage of recent enrollees of each school for each course offered that have failed to complete their course of instruction. Knowledge of such facts would be an indication of the probability of graduating from respondents' courses and would indicate the possibility of securing future employment upon graduating and the nature of such employment. Thus, respondents have failed to disclose material facts, which if known to a consumer would be likely to affect his or her consideration of whether or not to purchase such courses of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 13. Respondents have entered into contracts with purchasers of their courses of instruction which contained provisions for the cancellation of said contracts and the refund of tuition monies paid by said purchasers. In many instances, respondents have failed to offer to refund and refused to refund to purchasers who have cancelled their contracts such monies as may be due and owing according to the terms of said contracts.

The use by respondents of the aforesaid practice and their continued retention of said sums, as aforesaid, is an unfair act or practice and an act of unfair competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 14. Respondents in many instances have terminated or caused to be terminated company branch facilities and franchise facilities without allowing students enrolled in said facilities at the time of termination to complete their course of training at no additional cost or change in terms, and have failed to offer to refund and refused to refund the tuition monies paid by said students to respondents.

The use by respondents of the aforesaid practice and their continued retention of said sums, as aforesaid, is an unfair act or practice and an act of unfair competition within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 15. By and through the use of statements set forth in Paragraph Four hereof, and others, including oral statements, similar thereto but not specifically set out herein, respondents have represented, directly or by implication, that purchasers of said franchises would receive:

(a) advice and assistance from respondent for successfully maintaining and operating their businesses.

(b) a substantial income from the operation of profitable businesses, such as \$10,000 to \$40,000 per year.

