

Complaint

87 F.T.C.

IN THE MATTER OF
NATIONWIDE TRAINING SERVICE, INC., ET AL.

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

Docket C-2814. Complaint, Mar. 30, 1976—Decision, Mar. 30, 1976

Consent order requiring a Strunk, Ky., training school for heavy equipment operators, truck drivers, and related occupations, among other things to cease using unfair means and deceptive advertising to sell their courses, misrepresenting affiliation with various industries, employment opportunities, salary potential for training course graduates, training cost, manner of payment, training facilities and training programs, and job placement assistance. Respondents are required to make certain affirmative disclosures to students including three-day cooling-off period to cancel contract and have monies refunded. Respondents are further ordered to police the activities of salesmen and brokers engaged in the sale of respondents' training courses, to ensure compliance with the order.

Appearances

For the Commission: *James S. Teborek.*

For the respondents: *Harold G. Jeffers, Oneida, Tenn.*

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 Nationwide Training Service, Inc., a corporation, and Raymond E. Phillips, 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 Nationwide Training Service, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Kentucky, with its principal office and place of business located at Strunk, Kentucky.

Respondent Raymond E. Phillips is an individual and an officer of respondent corporation. His business address is the same as that of said corporate respondent.

PAR. 2. Respondents are now, and have been for some time last past, engaged in the advertising, offering for sale, sale or distribution of courses of study and instruction purporting to prepare graduates thereof for employment as heavy equipment operators, truck drivers, and related occupations. Said courses when pursued to completion

consist of a series of lessons pursued by correspondence through the United States mail and a period of inresidence 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 publication of advertisements concerning the said courses in newspapers of general circulation and have caused the correspondence portion of said courses, when sold, to be sent from respondents' place of business in the Commonwealth of Kentucky to purchasers thereof located in various other States of the United States. Respondents utilize the services of salesmen who induce prospective purchasers of said courses located in States other than the Commonwealth of Kentucky to contact said salesmen at respondents' offices. Said salesmen transmit to and receive from respondents contracts, checks and other instruments of a commercial nature relating to the sale of said courses to said purchasers. Respondents also utilize the services of brokers and solicitors, who pay respondents a fee for providing the resident training portion of courses to persons recruited by said brokers and solicitors. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said courses of study and instruction in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have published or caused to be published in the "Help-Wanted" and other columns of newspaper advertisements containing statements regarding job opportunities, training and wages for persons interested in becoming heavy equipment operators or truck drivers. Typical and illustrative, but not all inclusive of such advertisements are the following:

TRUCK DRIVERS

(Experience not necessary)

Professional drivers can earn up to \$5.41 per hour, plus overtime — up to \$20,000 per year. You can too after short training for local or over-the-road hauling. For application call (704)394-4320 or write: NATIONWIDE SEMI DIVISION, 3313 Belhaven Blvd., Charlotte, N.C. 28216.

HEAVY EQUIPMENT OPERATORS

Dozer-Scraper Operators needed. (Experience not necessary). Can earn up to \$300. per week, after short training. Call or write: NATIONWIDE HEAVY EQUIPMENT TRAINING SERVICE, INC. Phone (615) 622-3109, 1320 East 23rd St., Chattanooga, Tennessee 37404.

PAR. 5. By and through the use of the statements contained in the

advertisements set forth in Paragraph Four and others of similar import and meaning but not expressly set out herein, respondents represent directly or by implication, that:

1. The corporate respondent operates, is affiliated with, or represents a construction company or a trucking company.

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

3. Persons receiving training from respondents will earn such amounts as \$5.41 per hour; \$300 per week, or \$20,000 per year as truck drivers, heavy equipment operators or related occupations, upon completion of training.

4. There is a reasonable basis from which to conclude that there is now or will be a need or demand for heavy equipment operators or truck drivers which respondents' training is designed to meet.

PAR. 6. In truth and in fact:

1. The corporate respondent does not operate or represent and is not affiliated with any construction company or trucking company, but to the contrary is engaged in the sale of courses of instruction to prospective purchasers.

2. Respondents do not offer employment to persons who have been trained as heavy equipment operators or truck drivers, but attempt to and do sell courses of instruction to said purchasers.

3. Few, if any, persons who received training from respondents pursuant to said offer have earned amounts such as \$5.41 per hour, \$300 per week, or \$20,000 per year as truck drivers, heavy equipment operators or related occupations as a result of such training.

4. Respondents had no reasonable basis from which to conclude that there is now or will be a need or demand for heavy equipment operators or truck drivers which respondents' training is designed to meet.

Therefore, the statements and representations 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 the aforesaid, or similar, advertisements to visit respondents' salesmen at respondents' offices. For the purpose of inducing the sale of said courses, such salesmen make to prospective purchasers many statements and representations, directly or by implication, regarding opportunities for employment as heavy equipment operators and truck drivers available to purchasers of said courses, the assistance furnished to graduates of said courses in obtaining employment and other matters. Some of the aforesaid statements and representations appear in brochures, pam-

phlets and other printed material furnished to said salesmen by respondents and in other statements and representations made orally by said salesmen. Among and typical, but not all inclusive, of such statements and representations are the following:

1. Respondents have been requested by construction and trucking companies to train operators and drivers for jobs as heavy equipment operators and truck drivers with their companies upon completion of said training.

2. Graduates of said courses will be qualified thereby for employment as heavy equipment operators or truck drivers without further training or experience.

3. The nature of an initial payment by prospective enrollees of said courses prior to the undertaking of a formal obligation to respondents is not that of a nonrefundable tuition fee.

4. Respondents will permit enrollees of said courses to defer payment of the balance of the cost of said courses remaining after the initial or registration fee has been paid until after the graduate of said courses has obtained employment as a heavy equipment operator or truck driver.

5. Respondents will handle or arrange financing of the balance of the cost of said courses remaining after the initial or registration fee has been paid.

6. Respondents provide a placement service which will secure jobs as heavy equipment operators or truck drivers for graduates of said courses who want to work in such capacities.

7. Graduates of said courses who want to work are assured jobs as heavy equipment operators or truck drivers as a consequence of graduating from said courses.

PAR. 8. In truth and in fact:

1. Respondents have not been requested by construction or trucking companies to train people for jobs as heavy equipment operators or truck drivers, which jobs shall be offered by such companies to graduates of said training.

2. Graduates of said courses are not thereby qualified for employment as heavy equipment operators or truck drivers without further training or experience.

3. The sum of money which enrollees in said courses are required to pay prior to the undertaking of a formal obligation with respondents is a nonrefundable fee.

4. Respondents generally do not permit enrollees to defer payment of the balance of the cost of said courses remaining after the initial or registration fee has been paid until after employment as a heavy equipment operator or truck driver has been obtained.

5. Respondents seldom if ever arrange such financing to enable enrollees to pay the balance of the cost of said courses.

6. The placement service provided by respondents will not secure jobs as heavy equipment operators or truck drivers for graduates of said courses who want to work in such capacity.

7. Graduates of said courses who want to work are not assured jobs as heavy equipment operators or truck drivers as a consequence of graduating from said courses.

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 business as aforesaid respondents have utilized the services of brokers and other solicitors to provide students for the resident training portion of the courses offered by respondents. These brokers and other solicitors are under an obligation to pay a fee to respondents for providing to respondents enrollees of said resident training courses. Said brokers and other solicitors have published, or caused to be published, advertisements containing statements and representations similar to those described in Paragraphs Four and Five above. As a consequence of said advertisements or other inducements, prospective enrollees met with salesmen of such brokers and solicitors to discuss said courses. In their attempts to induce prospective enrollees to enroll in said courses, said salesmen made various statements and representations regarding the tuition-financing arrangements, the training program provided by respondents, the type of training equipment utilized by respondents, the assistance furnished to graduates in obtaining employment and the availability of employment opportunities, and other matters. Respondents have been aware of said statements and representations made by or in behalf of said brokers and other solicitors for the purpose of inducing prospective purchasers to enroll in courses offered by respondents. Said statements and representations are often false, misleading or deceptive.

PAR. 10. Respondents offered for sale courses of instruction to prepare graduates thereof for jobs as truck drivers without disclosing in advertising or through their sales representatives: (1) the recent percentage of graduates of each school who were able to obtain the employment for which they were trained; (2) the employers that hired any such graduates; (3) the initial salary any such graduates received; 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 indicate the possibility of securing future employment upon graduation and the nature of such employment. Thus, respondents have failed to disclose a material fact, which, if

known to certain prospective enrollees, would be likely to affect their 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.

PAR. 11. 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 salesmen, directly or indirectly, have engaged in the following additional acts or practices:

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. 12. Respondents have entered into contracts with purchasers of said courses of instruction which contracts contain 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 contract 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. 13. (a) Respondents have been and are now using the aforesaid unfair, false, misleading or deceptive acts and practices, which a reasonably prudent person should have known, under all of the facts and circumstances, were unfair, false, misleading or deceptive, to induce persons to pay or to contract to pay over to them substantial sums of money to purchase or pay for courses of instruction which, to such purchasers in connection with their future employment, and careers was, and is, virtually worthless. Respondents have received the said sums and have failed to offer refunds and have failed to refund such sums to or to rescind such contractual obligations of substantial numbers of enrollees and participants in such courses who were unable to secure employment in the positions and fields for which they have been purportedly trained by respondents.

The use by respondents of the aforesaid acts and practices, their

continued retention of said sums and their continued failure to rescind such contractual obligations of their customers, as aforesaid, are unfair acts or practices.

(b) In the alternative and separate from Paragraph Thirteen (a) herein, respondents, who are in substantial competition, in commerce with corporations, firms and individuals engaged in the sale of course of vocational instruction, have been and are now using, as aforesaid, false, misleading, deceptive or unfair acts or practices, to induce persons to pay over to respondents substantial sums of money to purchase courses of instruction.

The effect of using the aforesaid acts and practices to secure substantial sums of money is or may be to substantially hinder, lessen, restrain, or prevent competition between respondents and the aforesaid competitors.

Therefore, the said acts and practices constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act.

PAR. 14. By and through the use of the aforesaid acts, practices, statements and representations, respondents place in the hands of others the means and instrumentalities by and through which they mislead and deceive the public in the manner and as to the things hereinbefore alleged.

PAR. 15. 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 and distribution of similar courses of study and instruction.

PAR. 16. The use by respondents of the false, misleading and deceptive statements, representations, acts and practices and their failure to disclose material facts as aforesaid, has had, and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and to induce a substantial number thereof to purchase said courses of study and instruction offered by respondents by reason of said erroneous and mistaken belief.

PAR. 17. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Nationwide Training Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Kentucky, with its office and principal place of business located at Rural Route #1, city of Strunk, Commonwealth of Kentucky.

Respondent Raymond E. Phillips is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above-stated address.

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

ORDER

It is ordered, That respondents Nationwide Training Service, Inc., a corporation, its successors and assigns, and Raymond E. Phillips, individually and as an officer of said corporation, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of courses of

study and instruction in heavy equipment operation, truck driving or any other subject, trade or vocation, or in connection with any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I

1. Representing, directly or by implication, orally or in writing that:

(a) They are, or represent, or are affiliated with, construction or trucking companies or any industry for which enrollees of any courses offered by respondents are being trained; or misrepresenting, in any manner, the nature of their business.

(b) Persons receiving training will, or may, earn any specified amounts of money; or misrepresenting by any means the prospective earnings of such persons for employment after completion of said training.

(c) They have been requested by construction and trucking companies or any other business or organization to train persons for specific jobs; or misrepresenting, in any manner, respondents' connection or affiliation with any industry or any member thereof.

(d) Graduates of any courses will be qualified thereby for employment at jobs for which said graduates were purportedly trained, when additional training or experience is required.

(e) The nature of the initial payment by prospective enrollees of any courses prior to the undertaking of a formal obligation to respondents, is not that of a nonrefundable tuition fee; or misrepresenting, in any manner, the nature of any payment made by prospective enrollees of any courses offered by respondents.

(f) They, or others, will permit enrollees of any courses offered by them to defer payment of the balance of the cost of said courses remaining after the initial or registration fee has been paid until after the enrollee has completed said courses and commenced employment; or misrepresenting, in any manner, the terms or conditions under which payment is to be made for said courses.

(g) They, or others, will handle or arrange financing of the balance of the cost of said courses remaining after the initial or registration fee has been paid, unless respondents, or others specifically named, will in fact, handle or arrange such financing.

(h) They, or others, provide a placement service which may or will secure a job for graduates of said courses.

(i) Graduates of said courses are assured jobs as a consequence of graduating from said courses.

(j) There is an immediate or substantial demand, or a demand of any size or proportion, for persons completing any of the courses offered by the respondents in the field of truck driving or any other field, or otherwise representing, orally or in writing, that opportunities for employment, or opportunities of any type or number, are available to such persons, except as hereinafter provided in Paragraph 7 of this order. *Provided, however,* That respondents shall cease and desist making such representations unless the respondents in each and every instance:

(1) until the passage of a base period to be determined pursuant to Paragraph 7(b) of Part I of this order, after the establishment of a new school location by respondents in any metropolitan area or county, whichever is larger, where they did not previously operate a school, and after the introduction by respondents of any new course of instruction at any school or location, shall:

(A) have in good faith conducted a statistically valid survey which establishes the validity of any such representation at all times when the representation is made and

(B) have disclosed in immediate and conspicuous conjunction with any such representation, that:

All representations for potential employment demand or opportunities for graduates of this school (course) are merely estimates. This school (course) has not been in operation long enough to indicate what, if any, actual employment may result upon graduation.

(2) After the passage of a base period to be determined pursuant to Paragraph 7(b) of Part I of this order, and until two years after the establishment of a new school location by respondents in any metropolitan area or county, whichever is larger, where they did not previously operate a school, and after the introduction by respondents of any new course of instruction at any school or location, shall:

(A) make any such representations in the form and manner provided in Paragraph 7(b) of Part I of this order, and

(B) disclose in immediate and conspicuous conjunction with any such representation, that:

This school (course) has not been in operation long enough to indicate what, if any, actual employment may result upon graduation.

2. Placing ads in "Help-Wanted" columns or representing by any means that employment is being offered when such offer is not a bona fide offer of employment.

3. Accepting as enrollees in courses offered by respondents persons sent to respondents by, or otherwise utilizing the services of, brokers,

or solicitors who engage in any of the acts or practices prohibited by this order, or who otherwise misrepresent in any way the training program offered by respondents, the type of training equipment utilized by respondents, the tuition-financing arrangements, the assistance furnished to graduates in obtaining employment and the availability of employment opportunities, and other matters.

4. Failing to disclose, in writing, clearly and conspicuously, prior to the signing of any contract, to any prospective enrollee of any course offered by respondents, the full cost of such course including the fee for any home study lessons and for any residential training.

5. Failing to place the title "CONTRACT," in boldface type, on any document which evidences an agreement between a person and respondents relating to the purchase of any of the courses offered by respondents; and failing to remove from any such document the word "application," or words of similar import or meaning.

6. Failing to show each prospective purchaser the home study portion of said courses and allow said prospective purchaser a reasonable time for examination of said home study materials before said prospective purchaser has paid any money or has signed any contract, or has obligated himself in any other way.

7. Failing to send by certified mail, return receipt requested, to each person that shall contract with respondents for the sale of any course of instruction a notice which shall disclose the following information and none other.

(a) The title "IMPORTANT INFORMATION" printed in boldface type across the top of the form.

(b) Paragraphs containing the following information in the format prescribed in Appendix A and for a base period designated as described in Appendix B:

(1) The placement rate, ratio or percentage for graduates, and also the numbers upon which such rates, ratios or percentages are based;

(2) A list of firms or employers which are currently hiring graduates of respondents' courses in substantial numbers and in the positions for which such graduates have been trained, and the number of such graduates hired, as to the same graduates used to compute the placement percentage in (b) 1 above;

(3) The salary range of respondents' graduates as to the same graduates used to compute the placement percentage in (b) 1 above;

(4) The percentage of enrollees who have failed to complete their course of instruction, such percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility.

(c) An explanation of the cancellation procedure provided in this

order, namely that any contract or other agreement may be cancelled for any reason until midnight of the third business day after receipt by the customer, via the U.S. mail, of this notice.

(d) A detachable form which the person may use as notice of cancellation, which indicates the proper address for accomplishing any such cancellation.

This notice shall be sent by respondents no sooner than the next day after the person shall have contracted for the sale of any course of instruction; respondents, during such period provided for in subparagraph (c) above, shall not initiate contact with such person other than that required by this paragraph.

Provided, however, That subparagraph (b) above shall be inapplicable to any newly established school that respondents may establish in any metropolitan area or county, whichever is larger, where they did not previously operate a school, or to any course newly introduced by respondents, until such time as the new school or course has been in operation for the base period to be established pursuant to subparagraph (b) above. The following statement shall be included in such notice during such period:

All representations of potential employment or salaries are merely estimates. This school (course) has not been in operation long enough to indicate what, if any, actual employment or salary may result upon graduation from this school (course).

After such time as the new school or course has been in operation for the base period to be established pursuant to subparagraph (b) above, and until two years after the establishment of a new school location in any metropolitan area or county, whichever is larger, where they did not previously operate a school, or the introduction of any new course by respondents, the following statement shall be included in such notice:

This school (course) has not been in operation long enough to indicate what, if any, actual employment or salary may result upon graduation from this school (course).

8. Contracting for any sale of any course of instruction in the form of a sales contract or other agreement which shall become binding prior to midnight of the third business day after the date of receipt by the customer of the form of notice provided for in Paragraph 6 above. Upon cancellation of any said sales contract or other agreement as provided in Paragraph 7(c) above, respondents are obligated to refund within three business days to any person exercising the cancellation right, all monies paid or remitted up until the notice of cancellation.

9. Failing to disclose, clearly and conspicuously, in advertisements, in catalogs, brochures and on letterheads that respondents' business is

solely and exclusively that of a private school, not affiliated with any members of the construction industry, the trucking industry or any member of any other industry.

10. Failing to refund promptly to purchasers who have cancelled their contracts such monies as may be due and owing according to the terms of such contracts.

II

1. *It is further ordered, That:*

(a) Respondents herein deliver, by registered mail, a copy of this decision and order to each of their present and future franchisees, licensees, employees, sales representatives, agents, solicitors, brokers, independent contractors or to any other person who promotes, offer for sale, sells or distributes any course of instruction included within the scope of this order;

(b) Respondents herein provide each person or entity so described in subparagraph (a) of this paragraph with a form returnable to the respondents clearly stating his or her intention to be bound by and to conform his or her business practices to the requirements of this order retain said statement during the period said person or entity is so engaged; and make said statement available to the Commission's staff for inspection and copying upon request;

(c) Respondents herein inform each person or entity described in subparagraph (a) of this paragraph that the respondents will not use or engage or will terminate the use or engagement of any such party unless such party agrees to and does file notice with the respondent that he or she will be bound by the provisions contained in this order;

(d) If such party as described in subparagraph (a) of this paragraph will not agree to file the notice set forth in subparagraph (b) above with the respondents and be bound by the provisions of this order, the respondents shall not use or engage or continue the use or engagement of such party to promote, offer for sale, sell or distribute any course of instruction included within the scope of this order;

(e) Respondents herein inform the persons or entities described in subparagraph (a) above that the respondents are obligated by this order to discontinue dealing with or to terminate the use or engagement of persons or entities who continue on their own the deceptive acts or practices prohibited by this order;

(f) Respondents herein institute a program of continuing surveillance adequate to reveal whether the business practices of each said person or entity described in subparagraph (a) above conform to the requirements of this order;

(g) Respondents herein discontinue dealing with or terminate the us

