

Complaint

IN THE MATTER OF
BELL & HOWELL COMPANY, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9099. Complaint, May 27, 1977—Decision, May 8, 1980

This consent order requires, among other things, a Lincolnwood, Ill. seller of home study courses and its subsidiary to cease misrepresenting admission criteria, potential earnings, employment opportunities, and the need or demand for their graduates. The firms are further prohibited from misrepresenting the effectiveness of their job placement service; that experience is not necessary or advantageous in obtaining employment; that their courses are endorsed by a governmental agency; and that students are provided with instructional assistance. The order also requires respondents to make prescribed disclosures regarding the job success of previous students; the manner in which contracts can be cancelled; and the method used to calculate tuition obligations should a student drop out of a course. Additionally, Bell & Howell is required to deposit in an escrow account the sum of \$1.2 million to provide refunds for former eligible students.

Appearances

For the Commission: *Brian Hennigan, Carlton Lowe, and David Marx, Jr.*

For the respondents: *Samuel Weisbard, Bruce Schoumacher and William A. Cerillo, McDermott, Will & Emery, Chicago, Ill.*

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 Bell & Howell Company, a corporation, and Bell & Howell Schools, Inc., a corporation, hereinafter sometimes 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 Bell & Howell Company, (hereinafter sometimes referred to as BHC), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 7100 McCormick Ave., Lincolnwood, Illinois.

Respondent Bell & Howell Schools, Inc., (hereinafter sometimes

referred to as BHS), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 4141 West Belmont Ave., Chicago, Illinois. Respondent BHS is a wholly-owned subsidiary of respondent BHC.

The aforementioned respondents have cooperated, and acted together in carrying out the acts and practices hereinafter set forth. Respondents BHC has known of, condoned and approved, expressly or tacitly, the acts and practices of respondent BHS hereinafter set forth. Respondent BHC is materially and financially interested in and responsible for respondent BHS. BHC has received monies from BHS flowing from the acts and practices set forth herein.

PAR. 2. Respondents have been engaged for some time last past in the advertising, promotion, formulation, offering for sale, sale and distribution of resident training and home study courses to the public purported to prepare completing students thereof for employment, advancement or increased earnings in the fields of accounting, television repair, electronics, and other related career fields. The home study courses consist of a series of home study lessons pursued by correspondence through the U.S. mails. The resident training programs consist of a series of lessons similar in content and purpose to the home study courses. The violations alleged in this complaint relate to the acts and practices of respondents in connection with their home study program.

Further, for the purpose of enabling students to finance respondents' home study courses, respondents have arranged or assisted in the arrangement of credit and deferred payment terms and in the application for benefits under the Veterans Educational Assistance Act, 38 U.S.C. 1651, et seq. ("VEAA"), and federally insured student loans under the Higher Education Resources and Student Assistance Act, 20 U.S.C. 1071, et seq. ("FISLP"). Respondents have accepted the revenues and proceeds flowing therefrom.

Further, respondents have engaged in recruitment of employees by means of advertisements in printed media of general circulation, and through other means, whereby members of the general public are induced to accept employment under written agreements and compensation schedules as members of respondents' sales force.

PAR. 3. In the course and conduct of their aforesaid business, respondents have disseminated, and caused to be disseminated, by means in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, certain advertisements concerning the home study courses including, but not limited to, advertisements inserted in newspapers and magazines of general interstate circulation,

and by means of brochures, pamphlets and other promotional materials disseminated through the United States mails, and by other means, for the purpose of obtaining leads or prospects for the sale of such home study courses, for the purpose of inducing the purchase of such home study courses, and for the purpose of recruiting and inducing the acceptance of employment by sales force members. Respondents' sales force members have visited prospective purchasers throughout the various states to induce the purchase of respondents' home study courses. Respondents have transmitted and received, and caused to be transmitted and received, in the course of advertising, offering for sale, sale and distribution of such home study courses, and in the course of advertising, recruiting, and inducing employment of sales force members, lessons and equipment from the home study courses, advertising and promotional materials, sales contracts, invoices, billing statements, checks, monies, and other business papers and documents, to and from prospective students, students, prospective sales force members, and sales force members, located in various States of the United States, other than the state of origination.

Respondents, at all times mentioned herein, have maintained a substantial course of trade in said home study courses and recruitment of sales force members in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

PART I

PAR. 4. In the course and conduct of their aforesaid business, for the purpose of obtaining leads or prospects for the sale of their home study courses and inducing the purchase of such home study courses, respondents have made numerous statements and representations in magazines, newspapers, and other media, regarding opportunities for employment or advancement, occupational demand, earnings potentials, the placement assistance furnished to students completing respondents' home study courses, the instruction and assistance available to students, and other matters.

In the further course and conduct of their aforesaid business, respondents have caused persons who respond to their advertisements to be visited by respondents' sales force members in the homes of such persons. For the purpose of inducing the sale of respondents' home study courses, such sales force members have made to prospective purchasers many statements or representations, directly or by implication, as enumerated above in this paragraph. In addition, such sales force members have made representations, directly or by implication, regarding entry level wages and salary potentials, content and degree

of difficulty of home study courses, contract terms and financing arrangements, VEAA benefits and FISLP loans, and other matters. Some of the aforesaid statements and representations have appeared in brochures and other printed materials furnished by respondents to sales force members, and other statements and representations have been made orally by such sales force members to prospective purchasers.

PAR. 5. By and through the use of the aforesaid statements and representations respondents have represented, directly or by implication that:

1. There is an urgent need or demand for students who complete respondents' home study courses in the positions and career fields for which respondents train such students.
2. Students completing respondents' home study courses receive high wages or salaries from employment in the positions or career fields for which respondents train such students.
3. A substantial proportion of students completing respondents' home study courses obtain employment through respondents' placement service.
4. Respondents are selective in enrollment.
5. A high school education or its equivalent is sufficient for admission and successful completion of respondents' home study courses.
6. Help sessions are available to respondents' home study students at regular and frequent intervals and provide personalized instruction and assistance.
7. Instruction and assistance from instructors are readily available to home study students through telephone services provided by respondents.
8. Respondents' home study electronics courses are simple and involve primarily manual skills.

PAR. 6. In truth and in fact:

1. In many instances there is not an urgent need or demand for students completing respondents' home study courses in the positions or career fields for which respondents train such students.
2. In many instances students completing respondents' home study courses do not receive high wages or salaries from employment in positions for which respondents train such students.
3. A substantial proportion of students completing respondents' home study courses do not obtain employment through the placement service offered by respondents.

4. Respondents are not selective in enrollment; to the contrary, respondents require few qualifications of prospective students and accept all or most persons for enrollment in such courses who are willing to execute a contract to pay for such home study courses.

5. In many instances a high school education or its equivalent is not sufficient for successful completion of respondents' home study courses.

6. In many instances help sessions are not available to respondents' home study students at regular and frequent intervals and do not provide personalized instruction and assistance.

7. In many instances instruction and assistance from instructors are not readily available to home study students through telephone services provided by respondents.

8. Respondents' home study electronics courses are not simple and do not involve primarily manual skills.

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

PAR. 7. Respondents have offered for sale home study courses and have accepted students for enrollment on the basis of a high school education or its equivalent, without disclosing to prospective students:

1. That certain aptitudes or background are requisite for successful completion of such home study courses;
2. That a high school education or its equivalent does not necessarily insure that the prospective student has such requisite aptitudes or background; and
3. That respondents do not test or screen home study students to determine whether such students actually have the requisite aptitudes or background.

Disclosure of such facts to home study students would indicate to such students the significance of respondents' admission requirements and the probability of their completing such home study courses. Thus, respondents have failed to disclose material facts which, if known to certain prospective students, would be likely to affect their consideration of whether to purchase such home study courses.

Therefore, the aforesaid acts and practices were and are false, misleading, deceptive or unfair acts or practices.

PAR. 8. In the course of offering for sale and selling home study electronics courses, respondents have emphasized fun, simplicity and manual training, while understating, obscuring and failing to disclose the significance, nature and extent of written lessons and instructional

material involved in such courses. The aforesaid representations and non-disclosures have deceived students with respect to the content and nature of home study electronics courses. Therefore, the aforesaid acts and practices were and are false, misleading, deceptive or unfair acts or practices.

PAR. 9. Through the use of the aforesaid advertisements, materials, oral presentations and otherwise, and for the purpose of inducing the purchase of home study courses, respondents have degraded, debased or disparaged the present or potential career opportunities, education and training, self-image or other personal characteristics of prospective students. Further, respondents have represented, directly or by implication, that such prospective students can alter or improve such personal characteristics through respondents' home study courses.

The effect of the aforesaid disparagements and representations has been to aggravate and continue the unfair and deceptive effect of the acts and practices set forth herein. Therefore, the aforesaid acts and practices of respondents were and are unfair acts or practices.

PAR. 10. In the further course and conduct of their aforesaid business, respondents have assisted prospective students in making application or contracts for enrollment, deferred payment financing, benefits under VEAA, and loans under FISLP. In many instances respondents have made false, misleading or deceptive representations, directly or by implication, relating to the information, terms, conditions and obligations contained in such contracts, applications and agreements or remaining thereunder upon termination of enrollment. In many instances respondents have failed to fully explain and disclose material facts regarding the terms and conditions of such forms and agreements.

The aforesaid acts of respondents have deceived students with respect to the nature, terms and conditions of contractual obligations, veterans educational benefits, Federally Insured Student Loans, and other consequences of the contracts, applications and agreements.

The deceptions resulting from the acts or practices described in this Paragraph Ten are continuing, in many instances, through the period of the students' enrollment and concomitant deferred payment obligations.

Therefore, the aforesaid acts and practices of respondents were and are false, misleading, deceptive or unfair acts or practices.

PAR. 11. In the further course of their aforesaid business, and at all times mentioned herein, respondents have offered for sale home study courses intended to train students for employment in certain positions or career fields without disclosing in their advertising and printed material or through their sales force members:

1. the percentages of students recently completing the home study courses who were able to secure employment in the positions or career fields for which they were trained;
2. the initial salary received by such completing students; and
3. the percentage of recent students for each home study course offered that have failed to complete their courses of instruction.

Knowledge of such facts by prospective students of respondents' home study courses would indicate that a significant number of students have not completed such courses and not secured employment. Thus, respondents have failed to disclose material facts which, if known to certain prospective students, would be likely to affect their consideration of whether to purchase such home study courses.

Therefore, the aforesaid acts and practices were and are false, misleading, deceptive or unfair acts or practices.

PAR. 12. In the further course and conduct of their aforesaid business, and in furtherance of their purpose of inducing prospective students to execute enrollment contracts for the purchase of their home study courses, respondents and their employees, sales force members, and representatives, through the use of the false, misleading and deceptive statements, representations and practices set forth herein in this complaint, have induced prospective students to execute enrollment contracts and deferred payment financing agreements upon initial contact without affording such students sufficient time to carefully consider the purchase of the home study course or the financing thereof. Therefore, the aforesaid acts and practices were and are unfair acts or practices.

PAR. 13. In the further course and conduct of their aforesaid business, respondents have made representations and entered into contracts with home study students whereby respondents are obligated to provide and deliver, and such students are entitled to receive, in accord with their progress through the course, lessons and examinations, laboratory materials and equipment, tuition refunds upon cancellation, and certain services including, but not limited to, grading of lessons and examinations, and instruction or assistance through help sessions and telephone services. In many instances respondents have failed to provide or deliver such lessons, examinations, laboratory materials, equipment, tuition refunds and other services to home study students in a timely manner and in accord with the terms of the aforesaid contracts and representations. Such failures and delays on the part of respondents have impeded such students in their efforts to derive benefit from and progress through such home study courses and have resulted in inconvenience, expense and financial detriment to

such students. Therefore, the aforesaid acts and practices of respondents were and are unfair acts or practices.

PAR. 14. Through the false, misleading, deceptive, and unfair acts or practices herein set forth in this complaint, respondents have induced students and other persons or entities to pay, or contract to pay, to respondents substantial sums of money to purchase or pay for respondents' home study courses. In many instances such monies were paid to and received by respondents although such courses were of little value to students. Respondents have received the aforesaid monies and have failed to offer or refund such sums to, or to rescind the contractual obligations of, many students and other persons or entities participating in the financing of such home study courses.

By inducing students and other persons or entities to pay, or contract to pay, to respondents substantial sums of money for respondents' home study courses where such home study courses are of little value to students and by failing to offer or refund such sums to, or to rescind the contractual obligations of many students and other persons or entities where such courses are of little value, respondents have engaged in unfair acts and practices.

Therefore, the said acts or practices constitute unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act.

PART II

PAR. 15. In the further course and conduct of their business as aforesaid, respondents have recruited and induced members of the general public to accept employment under written agreements and to sell respondents' home study courses. In the course of such recruitment respondents have published or caused to be published advertisements in newspapers of general and interstate circulation throughout the United States and have made oral presentations through their agents, representatives, and employees. Through such publications, advertisements, oral presentations and otherwise, respondents have made statements and representations, directly or by implication, respecting earnings potential, sales territory, job security, sales quotas, company-generated leads and other terms of the employment relationship in order to induce individuals to accept employment in respondents' sales force and to sell home study courses on behalf of respondents.

PAR. 16. Furthermore, respondents have, through the acts and practices described herein, recruited and induced persons to accept employment in respondents' sales force and to enter into, as a condition

of such employment, written agreements and compensation schedules, which include the following termination provisions, in substance:

1. Employment under this schedule may be terminated by either party at any time.
2. Termination of the representatives' employment with the company will cause this (compensation) schedule to be cancelled and no amounts will be considered earned or accrued after the last day of active employment, as shown by the company records, unless termination is for one of the following reasons: death, retirement (as defined by the Bell & Howell profit sharing trust), or permanent total disability (as defined by the Bell & Howell group insurance master policy).

Through such contracts respondents have retained and exercised the power to unilaterally and substantially alter the terms of the employment relationship and the compensation received by sales force members. Included among such unilateral powers and practices, but not all inclusive thereof, are the following:

1. Respondents have arbitrarily and without cause denied, altered or periodically withheld sales leads from sales force members, thereby hindering such sales force members in obtaining enrollments and fulfilling the sales quotas or other performance requirements set by respondents.
2. Respondents have arbitrarily and unilaterally altered or increased the sales quotas and performance requirements.
3. Respondents have arbitrarily and unilaterally altered and reformed the commission schedule and other payment schedules, for the purpose of inducing or coercing such sales force members to fulfill increasingly higher sales quotas and other performance requirements.
4. Respondents have used various threats and forms of coercion against their sales force members, including but not limited to probation, termination, and restriction of sales leads, to coerce sales force members to comply with sales quotas and performance requirements.

As a result of the aforesaid powers and practices, respondents have, in many instances, induced or coerced sales force members to terminate employment; and respondents have thereby caused such terminated sales force members to forfeit earned compensation in accordance with the terms and conditions of the written agreements and compensation schedules.

The failure of respondents to make payment of earned compensation

to sales force members at termination does unjustly enrich respondents and is unfair.

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

PAR. 17. At the time of the false, misleading, deceptive, and unfair acts or practices set forth in this complaint, and as a result thereof, respondents have received certain complaints, reports and information from their home study students, sales force members and other persons, and from surveys and studies conducted by or on behalf of respondents, which indicated or reported the occurrence, causes, or results of such acts or practices. At the time of such complaints, reports or information respondents were engaged in the courses of conduct and business behavior herein set forth in Paragraphs Fifteen and Sixteen of this complaint.

Respondents have received the aforesaid complaints, reports and information and have continued to engage in the aforesaid courses of conduct and business behavior and have continued to enroll large numbers of home study students.

PAR. 18. The effect of the courses of conduct and business behavior set forth in Paragraph Fifteen through Seventeen herein, and the continuation of such conduct and business behavior, has been to aggravate and continue the unfair and deceptive effect of the acts and practices of respondents as alleged in Parts I and III of this complaint.

Therefore, engaging and continuing in such courses of conduct and business behavior is an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act.

PART III

PAR. 19. In the further course and conduct of their aforesaid business, respondents have advertised and promoted the availability of educational benefits under the Veterans Educational Assistance Act, 38 U.S.C. 1651, et seq. ("VEAA"), as an inducement to veterans to purchase and pay for respondents' home study courses. Said Act allows each eligible veteran to "select a program of education to assist him in attaining an educational, professional or vocational objective at any educational institution (approved in accordance with the terms of the Act) selected by him." 38 U.S.C. 1670. Rules promulgated by the Veterans Administration to carry out the policy and purposes of the VEAA further provide that programs of education will be approved for veterans educational benefits where "the veteran is not already

