

Recommendations for Final Disposition

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It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

LA SALLE EXTENSION UNIVERSITY

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

Docket 5907. Complaint, July 18, 1951—Decision, June 24, 1971

Order modifying an earlier order dated June 29, 1954, 50 F.T.C. 1083, which prohibited a correspondence school offering law courses from misrepresenting that students would be admitted to take bar examinations, by requiring the respondent to disclose in its advertising that its courses alone will not qualify a student for a bar examination.

Mr. Quentin P. McColgin and *Mr. William P. Bergsten* supporting the complaint.

Dow, Lohnes and Albertson, Wash., D.C., by *Mr. Thomas S. Markey*, *Mr. James A. Treanor, III*, and *Mr. James D. Monahan* for respondent.

CERTIFICATION OF RECORD OF THE COMMISSION WITH
RECOMMENDATIONS FOR FINAL DISPOSITION

OCTOBER 19, 1970

PRELIMINARY STATEMENT

On July 18, 1951, the Commission issued a complaint *In the Matter of La Salle Extension University*, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. After hearings, the Commission on June 29, 1954 [50 F.T.C. 1083], issued its findings, conclusions and order.

The Commission in issuing its order found that through the use of various statements and representations the respondent represented that students completing its courses of study and qualifying for its degree of Bachelor of Laws were eligible from the standpoint of education and legal training to be admitted to the bar examinations of the respective States.

The Commission found respondent's representations that such students were thereby eligible or enabled to participate in the bar examinations of the respective states were false, misleading and deceptive. Further, the Commission found that students whose education and legal training were limited solely to respondent's home study courses would not be permitted to participate in the bar examination of 44 States (at the time of the decision there were only 48 States admitted to the Union). The Commission found that as of 1950 Montana, Mississippi, Georgia and California were the only States which did not require that bar candidates' studies be pursued in a resident¹ law school or law office.

The Commission, therefore, issued the following order against the respondent:

ORDER

It is ordered, That respondent, LaSalle Extension University, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction, do forthwith cease and desist from representing, directly or by implication, that recipients of respondent's purported academic degrees in law or others satisfactorily completing respondent's course of study through correspondence will be admitted to or are otherwise eligible to participate in bar examinations, unless such representations are expressly limited to those states (specifically named) wherein the requirements for education and legal training requisite to participating in such examinations are fulfilled solely by completion of a course of legal study through correspondence.

On January 19, 1970, the Commission issued an Order to Show Cause against the respondent why the June 29, 1954, order issued by the Commission should not be amended as a result of substantial changes of conditions of fact and law and that the following order be substituted in lieu of the original June 29, 1954 order:

It is ordered, That respondent, LaSalle Extension University, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction, do forthwith cease and desist from:

1. Failing, in connection with respondent's courses of study in law, clearly and conspicuously to disclose; (a) in any advertisement or offer to sell; (b) on each page of any promotional material or descriptive brochure; (c) in each enrollment form, application form, sales contract or similar document, in type

¹ As used herein "resident" means that a law student actually attends lecture type classes on the various legal subjects taught on a regular basis, including night classes.

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as large as the largest type appearing thereon; that said courses are not recognized or accepted as sufficient education or legal training to qualify the student to become a candidate for admission to the profession of law in any of the States in the United States or the District of Columbia: *Provided*, That, respondent may qualify such disclosure by listing those States which will accept said courses if additional education and legal training requirements are met: *And provided further*, That respondent clearly and conspicuously and in immediate conjunction thereto disclose all such additional requirements.

2. Conferring or offering to confer an LL.B, LL.M, J.D., S.J.D. or any other law degree upon purchasers of respondent's courses of study and instruction in law.

On February 19, 1970, respondent filed its answer to the Order to Show Cause opposing the proposed order and requested that a hearing examiner be appointed to conduct hearings for the receipt of evidence. Thereafter the Commission issued an order reopening the proceeding and directing hearings for the receipt of evidence pursuant to Section 3.72(b)(3) of the Commission's Rules. The matter was subsequently assigned to the hearing examiner to conduct hearings and directing that upon completion of the hearings he certify the record, together with his recommendation for final disposition of this matter to the Commission. Thereafter, hearings were held and proposed findings and briefs filed with the examiner.

This matter is before the hearing examiner for certification to the Commission with his recommendations for final disposition. Consideration has been given to all of the evidence and the proposed findings and conclusions and brief filed by counsel for the respondent and counsel supporting the complaint, and all such proposed findings of fact and conclusions not hereinafter found or concluded are rejected; and the hearing examiner, having considered the entire record herein, makes the following recommended findings of fact, conclusions drawn therefrom and recommends the following order:

RECOMMENDED FINDINGS OF FACT

1. As previously found in the Commission's June 29, 1954, decision, the respondent is an Illinois corporation with its office and principal place of business at 417 South Dearborn Street, Chicago, Illinois. The respondent is engaged in the same type of business as originally found; namely, operation of a correspondence school selling courses of study and instruction in law and other subjects which are pursued by correspondence through the United States mails. During all periods of time the respondent has been engaged in a substantial course of trade in its courses of instruction in commerce between the various States of the United States and in the District of Columbia.

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2. In the course and conduct of its business and subsequent to the issuance of the order in this matter on June 29, 1954, respondent has continued to make and does now make representations in newspaper, matchbook and magazine advertisements regarding its correspondence law course in which it advertises that it offers "LAW TRAINING" and the "LL.B. DEGREE." In most instances, such advertisements invite the public to send for additional information.

Typical of representations made by respondent in such newspaper, matchbook and magazine advertisements are the following:

Enjoy the rewards offered law-trained men in business (CX 87).

STUDY LAW at home (CX 26).

LAW TRAINING FOR LEADERSHIP (CX 81).

La Salle law training.

EARN AN LL.B. DEGREE FROM LA SALLE (CX 87).

Upon completion of your training you are awarded a Bachelor of Laws degree, if qualified (CX 81).

Home Study Law Course (CX 86 A).

Earn a Law Diploma for Business Leadership (CX 86 A).

Law Degree (CX 77 B).

LAW COURSES

- Bachelor of Law Degree
- Business Law
- Insurance Law
- Claim Adjusting Law
- Law for Police Officers
- Law for Trust Officers (CX 40, 78).

3. Respondent sends additional promotional materials to members of the public who respond to the newspaper, matchbook and magazine advertisements set forth above. Such promotional materials make certain representations and explain the advantages of legal training and outline the course of study. In addition, respondent has sales personnel who call upon prospective students who have responded to respondent's matchbook, newspaper and magazine advertisements by requesting further information on respondent's courses of study.

Typical and illustrative, but not all inclusive, of representations made by respondent within such promotional materials are the following:

A background in Law, particularly as evidenced by an LL.B. degree, is also recognized as the one cultural asset above all others that increases personal prestige and influence in every area of living. (CX 80.)

Home study is an accepted American method of Law education. (CX 50 C.)

Home study is a popular, convenient, and professional way of acquiring a Law education. (CX 50 C.)

The faculty of the La Salle Law School is composed of people of high per-

sonal and professional standing, experienced both in the practice and teaching of law. (CX 36, 50 C.)

After you have completed your training and complied with all the requirements of the La Salle Law School, you are awarded a diploma of graduation and given the degree of Bachelor of Laws. (CX 36, 50 C.)

The subjects treated in the La Salle Law course are approximately the same as those included in the courses offered by the leading law schools of America. (CX 36, 50 C.)

La Salle is certified as an approved educational institution. (CX 36, 50 C.)

4. Respondent advertises and sells two major correspondence courses of study in law which, when successfully completed, result in the student obtaining a Bachelor of Laws (LL.B.) from respondent. The first of these courses, No. 300, is referred to by respondent as "Complete Law Training" (CX 31; RX 83) and "American Law and Procedure" (CX 16, 19; Tr. 182, 219). This course (hereinafter called Complete Law Training course) consists of 89 lessons at a cost of \$550 (Tr. 142). Respondent's courses Nos. 350 and 354, called respondent's "California Law Courses" are basically the same and are designed for students who wish to take the California bar examination. The course No. 354 is the same as respondent's course No. 350 with an additional year devoted to preparation for taking the California bar. There are 99 lessons in the California 3-year law course and the cost of \$695 (Tr. 142, 144). The 4-year course consists of 109 lessons and costs \$695 (CX 47 B), plus an additional charge for the fourth year.

5. Successful completion of respondent's Complete Law Training course No. 300 or its 3-year California Law Course will not meet the education and legal training requirements necessary for becoming a candidate for admission to the bar in any State of the United States or the District of Columbia (CX 38, 92; Tr. 164). In California a student is required to study law for 4 years by correspondence (CX 35, 92). Consequently, respondent's Complete Law Training course No. 300 or its 3-year California Law Course are not acceptable in any State. No State in the United States or the District of Columbia, with the exception of California, will permit a person to take that State's bar examination as the result of correspondence or extension study of law. While the States vary, the majority require successful completion of resident study at an American Bar Association approved or accredited law school. Some States still allow apprenticeship, study partly in school and in a law office over an extended period, after approval of the apprenticeship is received from the State (CX 38, 92).

6. Respondent's advertisements fail to set forth fully and conspic-

uously that successful completion of its Complete Law Training course No. 300 or its 3-year California Law Course does not qualify anyone to take a bar examination or practice law in any of the 50 States of the United States or the District of Columbia. The advertisements, in the form of matchbook, newspaper or magazine ads, usually only advertise law training or the fact that respondent grants on LL.B. degree and fail to set forth the fact that respondent's courses are of no value for anyone who wishes to practice law. (See Recommended Finding No. 2.) Numerous witnesses testified that it was their impression on reading respondent's ads that they would be able to take the bar examination or practice law in their respective States upon completing respondent's law course. (Tr. 86, 118, 129, 469-470, 475, 491, 523-525, 547, 558, 578-580, 592, 608, 624, 661-662, 667) Respondent's advertisements are usually accompanied by a blank form with which to request further information regarding respondent's courses. Respondent mails pursuant to such requests brochures (CX 36, 50 C, 80, 98) that contain some references to the limitations of respondent's courses and the value of its LL.B. degree. However, these brief explanations, usually in small print, are at least confusing, particularly when read in conjunction with the advertising claims.

7. Only in the State of California is it possible for one to take the bar examination and be admitted after successfully completing respondent's 4-year California Law Course. In addition, in California the rules regulating the admission to the practice of law provide "Before beginning the study of law, every general applicant shall have either: (1) completed at least two years of college work . . . or: (2) reached the age of 23 years and have obtained in apparent intellectual ability the equivalent of at least two years of the college work hereinabove defined." (CX 35, p. 10.) In its advertising respondent has failed to set forth fully and clearly the above requirements for becoming a candidate for admission in the State of California and in fact accepts students in the California Law Course who do not have the requisite 2 years or its equivalent of college work. Consequently, while completion of respondent's 4-year California Law Course meets the legal training requirements for the State of California, additional education or age requirements and tests must be met to qualify a candidate for the bar in the State of California and completion of respondent's 4-year California Law Course does not necessarily mean that such requirements have been or will be met (Tr. 118-121).

8. It is found, therefore, that respondent has failed in its advertis-

ing to point out fully and conspicuously that successful completion of either its Complete Law Training course No. 300 or its 3-year California Law Course does not qualify a person to become a candidate for the bar in any State of the United States or in the District of Columbia, including California. It is further found that respondent has failed to set forth fully and conspicuously that successful completion of either its 3- or 4-year California Law Course will not qualify one to take the California bar without meeting further age and educational requirements and successfully passing certain preliminary tests required by the State of California.

9. The Commission in its Order to Show Cause included a provision in its proposed order to the effect that respondent should be prohibited from conferring or offering to confer an LL.B., LL.M., J.D., S.J.D.² or any other law degree upon purchasers of its courses of study in law. Counsel in support of the complaint urge that such a provision is essential because the mere conferring of such degrees are inherently deceptive, since at least some of the persons who received such a degree are misled into believing that such degrees automatically qualifies them to take the bar examinations in the various States of the United States and to practice law in their respective States. Counsel in support of the complaint also contend that the respondent does not have the authority to issue such degrees from its state of incorporation, Illinois. Consequently, the deceptive nature of respondent's conferring of such degrees is somehow enhanced. (CSC's Sixth and Seventh Prop. Findings; see also CSC's Thirteenth, Fourteenth and Fifteenth Prop. Findings.)

10. Respondent is a business corporation organized in 1908 and has been awarding the LL.B. degree since 1915. Its curriculum has been approved by the State of Illinois as recently as January 1, 1970. While its corporate character contains no provision for the issuing of any degree (such a provision, in fact, was stricken from its original corporate charter), respondent, as a university, has assumed the implied corporate power to issue such degrees without challenge until the present proceeding. (RX 13, 19; Tr. 211, 214, 261-265, 269-270, 273-276, 280.)

11. In the examiner's opinion that question of what degrees, if any, can be offered or conferred by respondent is a matter of Illinois law and a function of the Illinois Superintendent of Public Instruction. The Illinois statute is specific and clear with regard to the

² The record shows that the only law degree ever advertised or conferred by respondent is the LL.B. degree.

awarding of degrees. (See CSC Sixth Prop. Finding.) The examiner is aware of no authority which would permit the Commission to enter into this field which is specifically regulated by State law. The cases cited by counsel in support of the complaint are not in point. The issue here involved is not whether State law interferes with the Commission's function in regard to deceptive advertising, but whether the Commission should enter into another completely unrelated field; namely, the granting of degrees. For the Commission to prohibit respondent from granting degrees, in effect pre-empting the State from enforcing its own laws in its own fashion, is not essential to the Commission's carrying out its function of prohibiting misleading advertising.

12. In this instance it appears to the examiner that the evil at which the original complaint and the present proceeding is directed is to prohibit the respondent from engaging in false and misleading advertising. The fact that respondent may not have authority from the State to issue law degrees may well be relevant to the question of whether its advertising is deceptive. However, the issue still revolves around respondent's advertising and not the fact that it may be issuing degrees without proper authority from the State of Illinois. There is nothing in the pertinent Illinois statutes which interferes with the Commission's carrying out its function of prohibiting deceptive advertising. The Commission if it so desired in a proper proceeding may well conclude that the respondent should be prohibited from advertising in any way the fact that it issues or confers law degrees.

13. In addition, virtually every witness who had responded to respondent's advertisements conceded that, if a clear explanation or disclaimer accompanied respondent's advertisements pertaining to law degrees, no deception in their regard would be possible (Tr. 103, 130-131, 243, 315, 507-509, 581, 600, 622, 692). As found above the present advertisements of respondent's LL.B. degree are misleading, and it appears to the examiner that an appropriate disclaimer or explanation should appear in immediate conjunction with all advertisements of respondent's law degrees. This will effectively eliminate the evil at which this proceeding is directed without the more drastic and unnecessary remedy of completely prohibiting the issuing of law degrees.

RECOMMENDED CONCLUSION

1. By the use of the statements and representations included in respondent's advertising and promotional materials, respondent has

falsely represented that students who complete its course of study in law and who receive its law degree (LL.B.) are thereby eligible to participate in bar examinations or to become practicing lawyers in their respective States. Such misrepresentations have the tendency and capacity to deceive members of the purchasing public and to induce the purchase of a substantial number of respondent's courses of instruction in commerce.

2. The rules and laws of the States that previously recognized respondent's courses of study in law have been changed so that now no State, except California under certain circumstances found above, recognizes respondent's courses of study in law or its academic degree of Bachelor of Laws (LL.B.) conferred on students completing its courses as meeting the minimum education and legal training requirements requisite to participating in the bar examinations of the respective States and to becoming practicing lawyers in such States.

3. In view of the false representations concerning the law courses and law degrees offered by respondent as well as the changed conditions of fact and law, the public interest requires the Commission to reopen, alter and modify its Cease and Desist Order issued in this proceeding on June 29, 1954, so as to inhibit such false representations.

4. The second paragraph of the proposed order contained in the Commission's Order to Show Cause is omitted as not appropriate or necessary to eliminate the deceptive nature of respondent's advertising of its law degrees.

RECOMMENDED ORDER

As pointed out above, the examiner does not recommend the inclusion of the second paragraph of the order contained in the Commission's Order to Show Cause. In addition, minor changes from the original paragraph 1 of the Commission's order have been made in order to make the order more specific. The following order to cease and desist is recommended.

It is ordered, That respondent, La Salle Extension University, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction, do forthwith cease and desist from failing, in connection with advertisements or promotion of respondent's courses of study in law, clearly and conspicuously to disclose (a) in any advertisement or offer to sell in type the same size and appear-

ance as the advertising claims appearing thereon; (b) on the front page or cover and on each page of any promotional material or descriptive brochure wherein respondent's law courses or law degrees are mentioned in type the same size and appearance as the advertising claims appearing thereon; (c) in each enrollment form, application form, sales contract or similar document, in type the same size and appearance as the advertising claims appearing thereon; that said courses are not recognized or accepted as sufficient education or legal training to qualify the student to become a candidate for admission to the profession of law in any of the States in the United States or the District of Columbia: *Provided*, That respondent may qualify such disclosure by listing the State or States which will accept said courses: *And provided further*, That if the State or States listed have any additional age, education, preliminary testing, or other legal training requirements that respondent clearly and conspicuously and in immediate conjunction with such list disclose, in type the same size and appearance as the advertising claims appearing thereon, all such additional requirements.

OPINION OF THE COMMISSION

JUNE 24, 1971

BY DIXON, *Commissioner*:

This matter is before the Commission on exceptions filed by counsel supporting the complaint and respondent from the hearing examiner's recommended findings, conclusions and order, filed October 19, 1970. A Commission order, issued June 29, 1954 [50 F.T.C. 1083], prohibits respondent from representing that recipients of its "purported academic degrees in law or others satisfactorily completing respondent's course of study through correspondence will be admitted to or otherwise eligible to participate in bar examinations unless such representations are expressly limited to those states . . . wherein the requirements for education and legal training requisite to participation in such examinations are fulfilled solely by completion of a course of legal study through correspondence."

The Commission, citing its understanding that respondent continues to offer for sale a correspondence course of study in law and continues to confer a purported academic degree of bachelor of law (LL.B.), and its further understanding that no state recognizes respondent's source of study or degree as meeting the minimum education and legal training requisite to becoming a candidate for admis-

sion to the profession of law, issued, on January 19, 1970, an order to show cause why the 1954 order should not be modified. The proposed order would have respondent affirmatively disclose that its courses of study are "not recognized or accepted as sufficient education or legal training to qualify the student to become a candidate for admission to the profession of law in any of the States in the United States or the District of Columbia; provided that, respondent may qualify such disclosure by listing those states which will accept said courses if additional education and legal training requirements are met; and provided further, that respondent clearly and conspicuously and in immediate conjunction thereto disclose all such additional requirements." The proposed order also would proscribe the conferring of or offering to confer an LL.B. or any other law degree by respondent.

Respondent filed an answer to the order to show cause, and, as the answer raised substantial factual issues, the Commission issued a further order, on February 27, 1970, reopening the proceeding and directing hearings for the receipt of evidence pursuant to Section 3.72(b) (3) of the Commission's Rules. After hearings and the filing of proposed findings and briefs by the parties, the examiner filed his recommendations.

No findings were recommended by the examiner, nor were they proposed by the parties, as to the general background of respondent's business. However, the record is clear in this regard.

Respondent, an Illinois corporation, is a proprietary institution, providing instruction by correspondence in numerous courses of study. In 1969, its overall enrollment exceeded 100,000 students, 10,088 of whom were taking courses purportedly relating to the study of law. In descending order of the number of students enrolled, respondent's leading courses are accounting, high school computer planning, interior decorating, law, business management, and hotel/motel management. La Salle's total revenue from the sale of all its courses, in 1969, was approximately \$50,000,000; its gross receipts from the sale of its "complete law courses" were \$3,332,750. The "complete law courses" are a three-year course, which cost \$550 and consists of 89 lessons, and a four-year course, costing \$695 and consisting of 109 lessons. Upon the completion of either of these two courses, respondent confers a bachelor of law degree (LL.B.). No state recognizes the degree as qualifying its recipients as candidates for admission to its bar. California accepts four-year correspondence courses, including respondent's, if the recipient meets several other qualifications.

The examiner found that respondent, in its advertisements, "failed to set forth fully and conspicuously that completion of its three-year [course] does not qualify anyone to take a bar examination or practice law in any of the 50 States of the United States or the District of Columbia," and that in its advertisements respondent usually advertised that its courses of study provided a legal education and could lead to a law degree, but failed to disclose the limited utility of the degree and course of study.

With these findings as a basis of support, the examiner recommended the conclusion that respondent's advertisements and promotional material are deceptive as they represent falsely that "students who complete its course of study in law and receive its law degree (LL.B.) are thereby eligible to participate in bar examinations or to become practicing lawyers in their respective states." The examiner's recommended order would require respondent to make an affirmative disclosure with the same wording proposed in the order to show cause.

Respondent does not take exception to the examiner's recommendation that the order require that disclosure be made, nor does it take exception to the wording of the disclosure. It objects strenuously, however, to the provisions requiring that disclosure be made "in type the same size and appearance as the advertising claims appearing thereon," and that the disclosure appear "on the front page or cover and on each page of any promotional material or descriptive brochure wherein respondent's law courses or degrees are mentioned."

The Type-Size Provision: Respondent questions whether it is necessary in the order to be more precise than to require that the disclosure be clear and conspicuous. But even if a specific provision is to be included, respondent argues, further, that requiring the disclosure to be the same size as the largest advertising claim is unreasonable.

Generally, to lessen the opportunity for misconstruction and misinterpretation of orders, the Commission strives to describe, with as much precision as is feasible, what will constitute compliance. This is clearly of the utmost importance when misconstruction can lead to a violation of the order and penalty proceedings. Imprecision, for that matter, can be fatal to the validity of an order. In *Federal Trade Commission v. Henry Broch & Co.*, 368 U.S. 360, 367-368 (1965), the Court said that "the severity of possible penalties prescribed . . . for violations of orders which shall have become final underlines the necessity for fashioning orders which are, at the out-

set, sufficiently clear and precise to avoid raising serious questions as to their meaning and application.”

With this in mind, we turn to the question of the reasonableness of the type-size provision. To reiterate, respondent does not dispute the examiner's finding that its representation that it was offering a course in the study of law led purchasers to believe that they could qualify for admission to the bar. This was deceptive, as no state except California recognizes correspondence courses for this purpose. Where, as here, the mere offering of the product or service leads to deception (without further affirmative claims), we believe that it is reasonable and necessary to demand that a disclosure required to dispel the deception be given equal prominence with the offer. We note that in certain promotional material, respondent's practice is to use the word "LAW" in large letters with the text of the ad in much smaller letters. Surely a prospective purchaser is entitled to be informed that the course will not qualify him to take the bar examination in letters equally as large as the letters which we find, on the basis of the record, convey this meaning.¹

Further specific arguments as to the unreasonableness of the type-size provision were advanced by respondent. Respondent argues that the type-size provision presents problems of indefiniteness and, also, that "in most cases it will be physically impossible with the existing layout designs to fix, in largest matching print, the rather lengthy disclosure required by the recommended order." Respondent also contends that the type-size provision will not assure the visibility of the disclosure. To support this argument, respondent imagines an advertisement in which all print is uniformly small so that the matching disclosure would "get lost in the crowd."

We agree with complaint counsel that the type-size provision cannot be considered unreasonable for the reason that it may require respondent to alter the layout of its advertisements. Unlike trademarks or trade names, advertising layouts are generally of transitory value; they rarely, if ever, can be said to constitute a valuable business asset which the Commission would endeavor to preserve if feasible. Moreover, it is well settled that if there is no way to present the claim in a particular medium without making a false representation, the seller must abandon the use of that medium. *Fed-*

¹The proposed order in the order to show cause provided that the disclosure be made in "type as large as the largest type appearing thereon." As the words in the promotion set in the largest type may not be advertising claims (e.g., in CX 77, "La Salle Extension University" is in the largest type), the examiner's recommended order in this respect is less demanding.

eral Trade Commission v. Colgate-Palmolive Co., et al., 380 U.S. 374 (1965).

Similarly, we reject respondent's contention that the type-size provision is unreasonable because it is indefinite. Although its argument is not entirely clear, respondent seems to base this assertion on the fact that the disclosure will vary among advertisements to the extent that the size of advertising claims vary from one advertisement to another. Whatever the basis for respondent's position, its argument is wholly without merit. Quite clearly, the type-size provision makes the order more definitive, while giving respondent some flexibility in composing its advertisements.

As to the contention that respondent could devise an advertisement with uniform and small-size print so that the disclosure would get "lost in the crowd," it is unlikely that respondent would find that it was to its advantage to compose such an ad, for the promotional claims would also be lost. Irrespective of this, the order, by including this specific provision, does not excuse respondent from complying with the broader "clear and conspicuous" requirement. Respondent's advertisements must, in short, be both of the type-size designated and also clear and conspicuous.

In summary, neither respondent's arguments nor our examination of the record shows that the type-size provision is unreasonable or not feasible. We therefore sustain the examiner's recommended order as to the type-size provision.

The "On Each Page" Provision: In support of its principal contention that the "on each page" provision is "unnecessarily onerous," respondent points out that its promotional material includes multi-page pamphlets relating to courses other than law. Respondent believes that under the wording of the order, it would be required to make the disclosure in such a pamphlet on each page, even though the page made no reference to law degrees or law courses. And even as to those materials devoted exclusively to its purported "courses of law," respondent contends that the number of pages are so numerous and hence the number of disclosures would be so great, that it would be unnecessarily redundant and degrading, and that the impact would be dulled, if it were required to make the disclosure on each page. Specifically, respondent recommends a provision that would require that the disclosure appear "clearly and conspicuously . . . , with such clarity as is likely to be observed and read, . . . in connection with the mention of respondent's law courses or law degrees in any promotional material or descriptive brochure."

To respondent's argument that the examiner's recommended order

would require disclosure on pages not referring to its law degrees or courses of law, complaint counsel contend that respondent has misinterpreted the order, that it is clear that the disclosure need be made only on pages "wherein law courses or law degrees are mentioned." As this conflict between complaint counsel and respondent indicates, the order is somewhat equivocal, and requires clarification. In any event, this conflict of interpretation does not bear upon the essential question, whether this provision should, stripped of any ambiguity, be included in the order.

Respondent's argument that a disclosure on each page will be redundant and degrading might be persuasive if we had reason to believe that prospective purchasers generally read each page of respondent's promotional literature before purchasing.² That some purchasers may do so is not controlling. It is more important that others may not, since the Commission's efforts are directed at protecting not only the most careful and intelligent buyers, but also the "ignorant, the unthinking and the credulous," who may base their decision to purchase on a cursory perusal of the literature at hand. *Charles of the Ritz Dist. Corp. v. Federal Trade Commission*, 143 F. 2d 676, 679 (2nd Cir. 1944). From our examination of respondent's promotional brochures, any page of which may induce purchase of respondent's course, we find that its argument in this regard is without merit.

* * * * *

We consider next complaint counsel's contention that the examiner erred in failing to include in the recommended order a provision preventing respondent from conferring or offering to confer an LL.B. or other law degrees. The examiner based this exclusion on his conclusions that the question of what degrees, if any, can be offered or conferred by respondent is a matter of Illinois law, and that if a clear explanation or disclaimer accompanied respondent's advertisements pertaining to law degrees, no deception in their regard would be possible.

We do not concur in that part of the examiner's holding which suggests that the Commission is powerless to prevent deception if the source of the deception has been approved by state law. To the contrary, we believe that our authority to prevent a deceptive trade

² Cf. *Bantam Books, Inc. v. Federal Trade Commission*, 275 F. 2d 680 (2nd Cir. 1960), where the court upheld a Commission order requiring a disclosure that respondents' books were abridged appear on the front cover and upon the title page of its books. In that matter, there was evidence that buyers of books almost invariably looked at either of these two places before purchasing.

practice in commerce would transcend a state law which may appear to sanction that practice.

However, since there is nothing in the record or in complaint counsel's brief to indicate that the conferring of an LL.B. degree would have the capacity or tendency to deceive the prospective student in any manner other than by conveying the false impression that the recipient of the degree would be qualified to become a candidate for admission to the profession of law and since the disclosure required by our order would dispel this deception, we agree with the examiner that a separate provision in the order prohibiting the conferring of the degree is not warranted on the basis of this record.

The offering of an LL.B. degree may, of course, lead the prospective student to believe that upon receipt of such degree he would be qualified to take a state bar examination. We note, in this connection, that in its initial contact respondent uses small ads, *e.g.*, matchbooks. Since it is possible that respondent may represent in such ads that it offers an LL.B. degree, without specific reference to its courses, we will amend the examiner's order to require that the disclosure be made both as to the courses and to the LL.B.

The remaining exceptions can be quickly disposed of. Complaint counsel argue that the Commission order should require that respondent make the affirmative disclosure in oral offers to sell, as well as written offers, so solicitations by respondent's salesmen would be covered by the order. Since, by our order, the disclaimer will appear on each page of respondent's promotional material, and in prominent size, it appears that interested consumers will be exposed to the disclaimer. Therefore, no further requirement as to the disclosure is necessary and we reject complaint counsel's exception in this regard. The order, however, will be changed to clarify any ambiguity as to this provision.

Respondent takes exception to the examiner's recommended Finding 6, which reads:

The advertisements, in the form of matchbook, newspaper or magazine ads, usually only advertise law training or the fact that respondent grants an LL.B. degree and fail to set forth the fact that respondent's courses are of *no value* for anyone who wishes to practice law. (Emphasis added.)

The record in the instant matter relates to the question whether respondent's courses of study qualified its recipients for the bar examination, and does not deal with the question of the courses' value to those individuals who wish to practice law. Hence, Finding 6 will be changed, as suggested by respondent, to read:

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The advertisements, in the form of matchbook, newspaper or magazine ads, usually only advertise law training or the fact that respondent grants an LL.B. degree and fail to set forth the fact that completion of these courses does not qualify anyone to take the bar examination or practice law in any of the 50 states of the United States or the District of Columbia.

As modified herein, the findings recommended by the hearing examiner are adopted as the findings of the Commission. An appropriate order will be entered.

Chairman Kirkpatrick and Commissioner Jones filed separate opinions.

SEPARATE OPINION

JUNE 24, 1971

BY KIRKPATRICK, *Chairman*:

I am in complete agreement with the majority with respect to the necessity and propriety of modifying the order in this case so as to require a clear and conspicuous disclosure, in all written promotional material, of the limited utility of respondent's course of instruction, in terms of qualification for admission to the profession of law. However, I am unable to agree with the conclusion that this disclosure requirement will be sufficient to fully protect consumers from misleading impressions concerning respondent's course of instruction. I believe that a prohibition on conferring or offering to confer law degrees is an essential supplement to the disclosure requirement.

Assuming that the required disclosure would be fully adequate in the absence of any *oral* promotional efforts, it seems to me that any corrective function served by a written disclosure in this case is susceptible to substantial dilution, if not complete obliteration, by means of representations made by respondent's salesmen, who make personal visits to the homes of consumers responding to advertisements. The majority has modified the examiner's order so as to make clear that the required disclosure provision is not applicable to *oral* offers to sell. I am not disturbed by this change, because required disclosures in oral presentations are largely unenforceable in any practical sense. But that is no reason to abandon any effort to deal with deception in oral presentations. La Salle's continued ability to offer and confer law degrees would be an effective "selling point" in oral presentations, and thus would continue to be a potentially powerful instrument of deception on the part of respondent's salesmen. I think the Commission can and should deal with this problem by prohibiting La Salle from granting or conferring any law degree.

The record is replete with evidence of misleading impressions created by sales representatives in the course of their presentations and

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in answers to questions posed by consumers. Several witnesses testified as to their interest in becoming lawyers, and as to their belief—fostered by the oral representations of La Salle's representatives—that the La Salle course would enable them to achieve this goal by receiving a law degree at the end of respondent's course. *See, e.g.*, the testimony of Messrs. Mitchell (Tr. 71),¹ Zersen (Tr. 89-90, 93-94),² Allen (Tr. 470, 475, 478),³ Coppolino (Tr. 493-497),⁴ Bailey

¹ *Question:* Do you recall anything more specific that she [the Sales Representative] told you about that course at that time?

Witness: Yes, she said I would obtain a LLB degree and that I would be eligible for the bar exam, and all I had to do was have the ambition to take the bar exam and the money to open an office afterwards.

Question: Did you get an impression of what the law degree was at the time she described it to you?

Witness: The way it was described to me, I believe it was a regular lawyer's degree that I would be able to take the bar exam and become a lawyer.

² *Question:* Mr. Zersen, after your visit with the salesman, what was your impression with respect to the law degree offered by LaSalle?

Witness: That I still could become a lawyer in the State of Nebraska.

Question: Did you then enroll?

Witness: Yes, I did.

Question: And for what purpose did you enroll in the course?

Witness: So that I could become a lawyer.

³ *Witness:* Then I asked him [the LaSalle Salesman] could I actually practice law in the State of New Jersey, and he said yes. Thereupon, he stated that if I decided to move, all it would require is sitting for the bar in that particular state and I would be able to practice law there, too.

* * * * *
Question: For what reason did you threaten to file a suit against LaSalle?

Witness: I felt that they had misrepresented, that the salesman had misinformed me with regard to obtaining a legal education to practice law . . .

* * * * *
Question: At any time, did you consider leaving your State, the State of New Jersey, to practice law in any other State?

Witness: No. I was told, that through the means of connection, I could obtain an LLB degree and practice in the State of New Jersey, and if I decided to move, I could just sit for the bar and take the necessary steps and I could practice in any other State.

Question: And who told you this?

Witness: The salesman.

⁴ *Question:* And what did you discuss with the salesman when he visited you?

Witness: I asked about the school; if I were successful in receiving an LLB degree, could I sit in the State of Rhode Island bar examination. It was at this time he told me that he didn't know about the basic requirements for the State of Rhode Island. All states had different requirements. But because I did hold a bachelor of science degree, coupled with a legally trained mind this course would give me, perhaps I could sit for the bar.

Question: After this discussion that you had with the salesman, what was your impression with respect to whether or not the LLB degree from LaSalle Extension University would satisfy the prerequisite legal educational requirements?

Witness: I felt that the educational requirements would be fulfilled, but that there might be some other requirements I might have to fulfill with the State of Rhode Island.

Question: What was your impression with respect to these other requirements?

Witness: Well, soundness of mind, moral character, residency in the State, the oath

* * * * *
Question: And what was your impression with respect to whether or not the LLB degree from LaSalle Extension University would satisfy the prerequisite legal requirements for sitting for the bar?

Witness: I felt that this education was sufficient to sit for the bar. Other requirements, other than educational requirements, might be pending.

(tr. 571-573),⁵ and Cooper (Tr. 611-612).⁶

* * * * *

The Commission has recognized, in analogous situations, the ineffectiveness of affirmative disclosure relief or other traditional remedies where oral presentations are a major source of the deceptive practice sought to be cured. *See, e.g., In the Matter of Arthur Murray Studio of Washington, D.C., Inc., et al.*, Docket No. 8776 [p. 401 herein], where the Commission prohibited respondent dance instructors from entering into contracts for dance instruction for an amount in excess of \$1,500. The Commission in that case agreed with the hearing examiner that an order without a \$1,500 contractual limitation would not "eradicate the root of the evil," and that such a provision "is a necessary and reasonable safeguard to forestall and stop in their incipiency the respondents' unfair and deceptive acts and practices before their purposes become fulfilled." Furthermore, it was determined that without such a provision, the order would not "effectively deter respondents" from engaging in deception. The Commission was clearly concerned with the enforceability of an order that did not contain the contractual limitation:

Since the selling practices involved here almost invariably take the form of oral representations made privately to a student, violations of an order

⁵ *Question*: Did you tell the salesman you were interested in pursuing a career in law?

Witness: Yes, I told him my purpose in taking the correspondence course would be solely so that I could eventually be admitted to the bar association for the purposes of practicing law.

Question: Which state did you contemplate applying for membership in the bar if you took this course and obtained the degree?

Witness: I felt this had to be the state I would attempt to do this in, New Hampshire.

Question: Did you inquire about whether or not it would qualify you to practice law in those two states?

Witness: You mean of the salesman?

Question: Yes.

Witness: I asked him this question. He said that in Massachusetts it was not possible to qualify to sit for the bar examinations in Massachusetts through correspondence training. However, he felt it was still possible to do so in New Hampshire, but that in a couple of years it might not be possible any longer. The standards might become more strict.

* * * * *

Question: Looking back on that incident now, do you have an opinion as to why he made this statement?

Witness: Yes. I feel he was emphasizing an element of urgency to me, indicating that I should enroll then in order to be permitted to sit for the bar examinations in New Hampshire. If I were to wait, it might possibly be too late.

⁶ *Witness*: He [the Salesman] led me, or told me—we talked about sitting for the bar examination in North Carolina, that I could, upon getting a Bachelor of Law Degree, sit for the North Carolina Bar examination.

Question: Your testimony was that the salesman told you if you got a law degree you could sit for the bar. Was that a LaSalle Degree?

Witness: LaSalle Law Degree.

Question: And then you enrolled in this course?

Witness: I enrolled.

addressed to such practices would be extremely difficult to discover and prove. In view of respondents' demonstrated proclivity to utilize such sales methods, we have no doubt that they would continue to use them if they believed they could do so without detection. They would, however, have considerably more difficulty circumventing an order which would prohibit them from entering into contracts in excess of \$1500.

The instant case is like *Arthur Murray* in the sense that some prohibition on otherwise lawful conduct is a "necessary and reasonable safeguard" against continued deception, since the offer and conferral of degrees may be the principal prop or initial basis for the conveyance of misleading impressions by respondent's salesmen.

In favoring a ban on the offer or conferral of law degrees, I intend no derogation whatsoever with respect to the inherent value of respondent's course of instruction in law. I have no doubt that the education provided by respondent's courses can be of substantial benefit to many individuals in fields other than the actual practice of law. Since, however, the right to confer law degrees can be a source of deception, it should be proscribed in this case.

SEPARATE OPINION

JUNE 24, 1971

BY JONES, *Commissioner*:

This matter arose on the Commission's order to respondent to show cause why the Commission's 1954 order [50 F.T.C. 1033] against respondent should not be modified in two major respects:

First, to require respondent to disclose the fact that the LL.B. curriculum which it offered is not recognized or accepted "as sufficient education or legal training to qualify the student to become a candidate for admission to the profession of law in any of the State in the United States or the District of Columbia," and

Second, to prohibit respondent from conferring the LL.B. or any other law degree upon purchasers of respondent's courses of study and instruction in law.

After a full hearing and a substantial record, the Commission now comes to the anomalous conclusion that it will be sufficient protection for the public if respondent is required to disclose the fact that the legal curriculum which it is selling in no sense constitutes a legal education while at the same time it is permitted to promote this curriculum as enabling the prospective student to earn an LL.B. or equivalent law degree.

The Commission has determined that respondent's advertising is

deceptive because respondent's courses do not amount to law training in the sense of the "minimum education and legal training requirements" of any state in the union. The record clearly supports this conclusion and I agree with the Commission's decision in this regard.

My difficulty arises with the Commission's conclusion that this deception can be cured by the single requirement that respondent disclose that "said courses are not recognized or accepted as sufficient education or legal training to qualify the student to become a candidate for admission to the profession of law in any of the States in the United States."

The deception sought to be eliminated here is of prospective students seeking to earn a law degree. We cannot know the variations in sophistication of the prospective students for respondent's courses. We have no reason to doubt that there may well be students who would like to enroll in a course of study involving the law, earn an LL.B. degree and never engage in the practice of law but simply work in jobs where their law training has been useful. As to these students, respondent's courses will provide exactly that and no more and no deception will exist as to them.¹

It is a fair inference, however, that a substantial number of prospective students are interested in respondent's LL.B. curriculum because they are seeking to earn their living at the practice of law.

The question before us is whether these students will be protected from the deception which the Commission has found to inhere in respondent's promotional materials by the disclaimer about the uselessness of respondent's courses in qualifying students to sit for a bar examination.

The entire thrust of respondent's promotional material consistently centered on the representation that its law school curriculum would provide the student with "law training" and the "LL.B. degree." We do not know—and this record is silent—on what "being a lawyer" means to all of the young prospective students who may be attracted to respondent's school because of its advertised law degree

¹ It can be questioned, however, whether there is not a serious deception inherent in holding oneself out as having earned an LL.B. degree under these circumstances. Employers or clients might be seriously misled. Thus respondent's practice of awarding degrees may in effect constitute the instrumentality for deceiving a much wider segment of the public than simply prospective students of respondent's courses. However, this possible deception was not raised during the proceedings and I am, therefore, not relying on it in my rationale for dissenting from the Commission's opinion here.

and law training.² We do not know whether the students interested in enrolling in respondent's law course are fully aware of the significance of the difference between taking a law course, being awarded an LL.B. degree and being admitted to the bar of a state in order to practice law. Thus the interrelationship or interchangeability between the terms "being a lawyer," "practicing law," "having an LL.B. degree," or "being admitted to practice" cannot be sharply defined by us. Clearly, if we are concerned with preventing prospective students from being deceived by respondent's law courses then it is wholly unrealistic for us to permit respondent to continue the bulk of its advertising about law diplomas, law degrees, LL.B. degrees, and the like and believe that all of the possible connotations which these terms will have for prospective students will be dissipated by a formal disclaimer about admission to the bar.

The disclaimer ordered here, in my judgment, constitutes only partial remedy for the broader deception generated by respondent's promotion of its LL.B. degree. Moreover, in my judgment the disclaimer in respondent's promotional materials when used in conjunction with the promotion of the LL.B. degree may itself be a source of additional confusion because of its basic inconsistency with the permitted representation of respondent that it awards an LL.B. degree. Even if the disclaimer or the inconsistency served to put a prospective student on notice and prompted him to make further inquiry, the extent to which his uncertainty and doubts will be correctly answered will depend on how he phrases whatever question he asks and to whom he directs his question.³ If he asks "can I practice law with an LL.B. degree without being qualified to become a candidate for admission to the profession of law in any state," he

²The record contains testimony principally by students who interpreted "being a lawyer" in terms of sitting for a state bar examination. We cannot conclude from this record—nor was any evidence introduced to support the proposition—that all prospective LaSalle students are aware of the need to take the bar examination in order to become a lawyer. Indeed since the principal point in issue on the liability phrase of this hearing related to whether respondent's promotional materials—which make no express representations with respect to qualifying students to take a bar examination—in fact conveyed this notion and hence were false. Thus, it is likely the students selected to testify were those who had known of the bar requirements and were misled into believing from respondent's representations that its courses would qualify them. Testimony was not offered by students whose misconceptions might have been of a more generalized nature as to the capability of respondent's courses to enable them to become lawyers without any specific knowledge of the essentiality of taking a bar examination in order to practice law.

³Several of the witnesses did make inquiry about respondent's courses, wrote to the American Bar Association and received full information about requirements to practice law. We cannot be certain, however, that all applicants will take this route.

will receive a proper answer and the significance of the disclaimer will be clear. But if he asks "can I practice law if I get an LL.B. degree," or "if I get an LL.B. degree can I practice Law," or finally "what do I have to do to be a lawyer," the answers which he gets back may concentrate on going to law school and getting a law degree rather than focusing on the next step which is to pass the bar exams. Since most lawyers eventually pass the bar, when asked about how to become lawyers, they will frequently think only in terms of going to law school. Thus the Commission can in no way be certain that the confusion engendered by respondent's "law training" and LL.B. degree will be dissipated by the disclaimer which relates simply to taking bar examinations.⁴

The Commission is fully empowered to require such relief as in its judgment will totally remove any possibility of deception flowing from a respondent's practices. *Jacob Siegel Co. v. FTC*, 327 U.S. 608 (1946). Moreover the Commission is fully authorized to direct the elimination of the source of the deception even if this would involve excision of trade names or trademarks. *FTC v. Army & Navy Trading Co.* 88 F. 2d 776, 786 (D.C. Cir. 1937); *Bakers Franchise Corp. v. FTC*, 302 F. 2d 258 (3 Cir. 1962). The Commission's relief is not required to track precisely the exact form of the specific deception as it was established by the proof in the record. In the instant case the deception perpetrated here is respondent's misrepresentation that its course of study will enable students to practice law. The proof of the deception is the fact that respondent's graduates are not qualified to sit for any bar examination. In no sense is the Commission limited in its remedy to straightening out that particular fact or compelled to ignore the broader dimensions of the overall deception that respondent's graduates will not be able to practice law. The Commission is specifically authorized in its relief to close off all possible avenues of deception. *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952). Clearly the representation that completion of its courses will earn an LL.B. degree is such an avenue to the basic deception.

This Commission will have done a vain act if it rests its relief here solely on the unknown effect of a disclaimer and its hopes that the require disclaimer will in fact wholly and totally eliminate the confusion and deceptions caused by respondent's promotion of its

⁴ Several witnesses testified in support of the adequacy of the disclaimer although these witnesses were not asked whether in their judgment it would also be necessary or valuable to limit the promotion of the LL.B. degree as well. One witness, the Executive Director of the State Bar of Wisconsin, did make this point. (Tr. 463, 465.)

LL.B. degree. Certainty of result is not always available to the Commission. Here, however, certainty is available. The Commission need only prohibit the source of the deception, namely the promotion of the LL.B. degree. When a remedy of this type is to hand, it disserves the public interest and wastes the resources of the Commission to settle for a halfway measure whose impact, effect and capability to cure the deception has not been shown on this record.

In the instant case, the consequences of the slightest ambiguity or capacity of respondent's advertising to mislead are of the most serious kind. Young students who respond to respondent's advertising will invest both their funds—and more important—three years of their life in pursuing their life's career goal. If any confusion or misunderstanding is generated by respondent's advertising, it may not be until after the expiration of this period of time that students will discover that their financial investment has been for naught and that they are no nearer their career goal than when they started. This is the cruelest hoax of all. The Commission under these circumstances cannot risk even the slightest chance that its relief here will not be adequate to remove the deception. Nor is the risk of deception here slight. In my judgment, it is inevitable that some students will be misled unless the major source of the deception is eliminated. The Commission's relief must eliminate all references to any LL.B. or equivalent degree. Any relief short of this will be wholly inadequate.

ORDER

This matter has been heard by the Commission on exceptions filed by respondent and counsel supporting the complaint from the recommended findings, conclusions and order of the hearing examiner, filed October 19, 1970. The Commission has determined that the exceptions should be granted in part and denied in part, and that the recommended findings of the hearing examiner, modified to conform with this opinion, should be adopted as those of the Commission. Other findings of fact and conclusions of law made by the Commission are contained in that opinion. For the reasons therein stated, the Commission has determined that the recommended order entered by the hearing examiner should be amended. Accordingly,

The Commission being of the opinion that the public interest will best be served by modifying its order of June 29, 1954 [50 F.T.C. 1083]:

It is ordered, That the hearing examiner's recommended Finding 6 be, and it hereby is, amended to read:

The advertisements, in the form of matchbook, newspaper or magazine ads, usually only advertise law training or the fact

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that respondent grants an LL.B. degree and fail to set forth the fact that completion of these courses does not qualify anyone to take the bar examination or practice law in any of the 50 states of the United States or the District of Columbia.

It is further ordered, That, as amended herein, the recommended findings of the hearing examiner be, and they hereby are, adopted as the findings of the Commission.

It is further ordered, That the Commission's order of June 29, 1954, be, and it hereby is, modified to read as follows:

It is ordered, That respondent, La Salle Extension University, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of courses of study and instruction, do forthwith cease and desist from failing, in connection with advertisements or promotion of respondent's courses of study in law or of its law degrees, clearly and conspicuously to disclose, in type the same size and appearance as the advertising claims appearing thereon: (a) in any advertisement or written offer to sell; (b) on the front page or cover of promotional material or descriptive brochure wherein respondent's law courses or law degrees are mentioned and in said promotional material or descriptive brochure on each page on which respondent's law courses or law degrees are mentioned; (c) in each enrollment form, application form, sales contract or similar document; that said courses are not recognized or accepted as sufficient education or legal training to qualify the student to become a candidate for admission to the profession of law in any of the States in the United States or the District of Columbia: *Provided*, That respondent may qualify such disclosure by listing the state or states which will accept said courses: *And provided further*, That, if the state or states listed have any additional age, education, preliminary testing, or other legal training requirements, respondent clearly and conspicuously and in immediate conjunction with such list disclose, in type the same size and appearance as the advertising claims appearing thereon, all such additional requirements.

It is further ordered, That respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the nature and form of its compliance with this order.

Chairman Kirkpatrick and Commissioner Jones filed separate opinions.

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Complaint

IN THE MATTER OF

JAMES W. HARRISON TRADING AS INTERSTATE HIGH
SCHOOL PRESS ASSOCIATIONCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-1948. Complaint, June 24, 1971—Decision, June 24, 1971*

Consent order requiring a Denmark, S.C., individual doing business as the Interstate High School Press Association to cease using any words implying that respondent's business is nonprofit or affiliated with any press-media, inducing the purchase of advertising by implying that he is aiding athletes, implying that the respondent is an association, misrepresenting that respondent's publications have the endorsement of many high school coaches, and misrepresenting that respondent's directories are distributed free to coaching staffs and public libraries.

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 James W. Harrison, individually and trading as Interstate High School Press Association, hereinafter referred to as respondent, has 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 James W. Harrison is an individual trading and doing business as Interstate High School Press Association with his office and principal place of business located at 226 East Hammond Street, Denmark, South Carolina.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the business of publishing and distributing, on an annual basis, a national directory of high school athletes known as "Who's Who in High School Athletics." Said directory is caused by respondent to be circulated from its point of publication in one State to purchasers located in various other States of the United States. Respondent has also published and distributed a directory of high school athletes called "Who's Who in South Carolina High School Athletics," and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said publications in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent in the course and conduct of his business represents and has represented, directly or by implication, to prospective advertisers as well as to coaches and athletes of the various high schools throughout the United States, that the "Who's Who" athletic annuals published by Interstate High School Press Association, are endorsed by, affiliated with, or the official publication of the National Federation of State High School Athletic Associations or other nationally recognized high school athletic associations.

Further, a substantial part of respondent's income is derived from the sale of advertising space in the "Who's Who" directories to business concerns located throughout the United States. The respondent contacts said business concerns by mail and other means seeking to induce them to purchase advertising space in said publications by the use of materials which in appearance and form implies that it is a bill for advertising in the "Who's Who" publications and that the recipient thereof is obligated for the amount indicated.

PAR. 4. In truth and in fact, the "Who's Who" athletic annuals published by Interstate High School Press Association are not endorsed by, affiliated with, or the official publication of the National Federation of High School Athletic Associations or other recognized national high school athletic associations, but are independently operated by the respondent.

Moreover, the materials simulating bills for advertising space in the "Who's Who" athletic annuals are, in truth and in fact, merely solicitations for advertising and the recipient is not obligated for the amount designated.

PAR. 5. In the course and conduct of his business, as aforesaid, and for the purpose of selling the "Who's Who" athletic directories or advertising space in said publications, respondent distributes and has distributed by means of the United States mails, and in various other ways to prospective purchasers, letters, circulars, advertising material, advertisements and various other kinds of promotional material containing statements and representations respecting his business. Typical and illustrative of the foregoing, but not all inclusive, are the following:

(a) Published advertisements to high school coaches and athletes:

You have been nominated to *Who's Who in High School Athletics*.

There are many advantages to be gained from such a project as this. College coaches have been begging for such a publication to assist them in their recruiting (sic). Copies are made available to schools and libraries. * * *

The publication will include outstanding athletes from all over the United States. Interstate High School Press Association is sponsoring the publication.

* * *

Complaint

This is an invaluable aid to any college coach involved in the competitive field of recruiting. This could aid us in discovering the talented overlooked athlete.

A North Carolina College Coach

(b) Published materials to advertisers:

"WHO'S WHO IN HIGH SCHOOL ATHLETICS
INTERSTATE HIGH SCHOOL PRESS ASSOCIATION
P. O. BOX 216, DENMARK, SOUTH CAROLINA 29042

_____ PAGE AD '69-'70 EDITION \$ _____
STATE _____ SECTION _____ REP. _____

THANK YOU FOR HELPING US HELP THE YOUNG PEOPLE
OF YOUR STATE."

PAR. 6. By and through the use of the above quoted statements and representations and various other statements and representations of similar import and meaning, but not expressly set forth herein, respondent represents, and has represented, directly or by implication that:

1. Interstate High School Press Association, the trade name used by respondent in its written advertising and promotional materials, is a non-profit organization, which is affiliated with some aspect of the press media and is approved by the National Federation of State High School Athletic Associations or other nationally recognized high school athletic associations.

2. It is an "association" composed of a five member committee which formulates policy and compiles, verifies and evaluates informational data submitted by athletes nominated for publication in the "Who's Who" athletic directories.

3. "Interstate" had received numerous requests after its publication of "Who's Who in South Carolina High School Athletics," to expand into other States and publish "Who's Who in High School Athletics."

4. The "Who's Who" athletic annuals have the endorsement of many high school administrators, coaches and athletes because of its invaluable contribution in recognizing outstanding high school athletes who would otherwise go unnoticed.

5. There are many advantages to be gained from the "Who's Who" athletic directories; one being that college coaches have been begging for such publications to aid them in their recruiting.

6. The nominees who appear in "Who's Who in High School Athletics" are the nation's top high school athletes.

7. Copies of "Who's Who in High School Athletics" are made available "free of charge" to college coaching staffs as well as public and high school libraries.

PAR. 7. In truth and in fact:

1. Interstate High School Press Association is a profit-making concern, which is neither affiliated with any aspect of the press media nor approved by any nationally recognized high school athletic association.

2. "Interstate" is not composed of a committee which formulates its policy but is solely owned and operated by the respondent.

3. The demand to expand "Who's Who in South Carolina High School Athletics" into an athletic directory of national stature was merely a fabrication by respondent to induce participation by the various high school coaches and athletes throughout the United States.

4. The athletic annuals published by Interstate High School Press Association are not endorsed by any high school administrators, coaches or athletes. Furthermore, the "Who's Who" publications do not necessarily honor outstanding high school athletes but recognize only those nominated athletes who wish to participate.

5. College coaches have not shown a genuine interest in the "Who's Who" athletic annuals as evidenced by their lack of enthusiasm in purchasing the annuals for use in their recruiting program; furthermore, the only advantage to be gained by an athlete's appearance in the said directories is for purposes of vanity.

6. The nominees who appear in "Who's Who in High School Athletics" are not the nation's top high school athletes. In actual practice, a small percentage of those high school coaches contacted make nominations in respondent's publication and the information furnished by the athletes is unverified.

7. Copies of "Who's Who in High School Athletics" are not made available "free of charge" to college coaching staffs, or public or high school libraries.

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

PAR. 8. The use by the respondent of the aforesaid false, misled-

