

Syllabus

IN THE MATTER OF
THOMAS J. CASEYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4586. Complaint, Sept. 8, 1941—Decision, Aug. 16, 1944*

Where an individual engaged in the competitive interstate sale and distribution of correspondence courses of study and instruction in electronics, photocells, television and radio; through sales representatives and through printed matter distributed among prospective students, enrolled students, and others—

- (a) Represented that the school conducted by him was both a resident and correspondence school and a large organization composed of various divisions and departments, and that he operated a powerful short-wave radio station as part of the operating equipment of the school;

The facts being he was engaged solely in conducting a correspondence school with limited personnel; it was not an extensive organization but occupied only a small portion of one floor of the building concerned; and while he did own the equipment of a certain radio station located in his offices and operated by another, it was not used for any purpose connected with his school; and

- (b) Represented that he maintained a staff of field engineers who called upon students at frequent intervals to give them instruction and assistance; that in connection with his courses he furnished home laboratory equipment, including a complete short-wave transmitting and receiving set of the value of several hundred dollars which was included in the cost of tuition; and that he would establish numerous short-wave broadcasting stations throughout the various states and establish such a station in the near vicinity of the prospective student for assistance in training him;

The facts being that the true function of his so-called "field engineers" and "field instructors" who called on students at irregular intervals, ostensibly to assist them in their study, was to renew the students' interest in the course and induce payment of delinquent accounts; laboratory equipment furnished by him consisted of tools, tubes, condensers and other material for the purpose of experimenting in radio operation and construction, and was not of the value of several hundred dollars, but of approximately \$50.00; and he had not established and did not establish any such short-wave broadcasting stations for the assistance of his students;

- (c) Represented that persons completing his courses of study would be fully qualified as electrical engineers or as electronic engineers; that he selected only a limited number of applicants in each community for his courses; and that persons lacking in education, experience or aptitude could become competent and expert electrical or electronic engineers by taking the same;

The facts being that the instruction offered by him was not a complete course in electronic or electrical engineering, and would not qualify a person as such engineers, as he did not teach higher mathematics or physics—subjects which could not be taught with sufficient success by correspondence to qualify a person as aforesaid; and applicants solicited and selected by him were not limited but included all available prospects, who were solicited and accepted, including persons who had not completed high school, on the representation that his courses would qualify

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them as aforesaid when in fact they were lacking in education, experience or aptitude; and

- (d) Falsely represented that positions were immediately available in the radio field to persons who had completed his said courses of study, and that relay television stations would be established throughout the various states and in the near vicinity of the prospective student, making positions available at such stations for graduates of his school;

With the effect of misleading purchasers and prospective purchasers into the mistaken belief that said representations were true, and of inducing them thereby to purchase his said study courses, and with capacity and tendency so to do:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Andrew B. Duwall*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. Joseph L. Bard, of Minneapolis, Minn., for respondent.

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 Thomas J. Casey, an individual, hereinafter referred to as respondent, has violated the provisions of the 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. The respondent, is an individual, formerly doing business under the name and style of National Institute of Technology, and since on or about June 6, 1939, doing business under the name and style of National School of Electronics, with his office and principal place of business at 529 South Seventh Street, Minneapolis, Minn.

PAR. 2. Respondent is now, and has been for more than five years last past, engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of courses of study and instruction designated as "Electronics" which includes such subjects as Photo Cells, Television, Ultra Short Waves, Sound Broadcasting, Talking Movies, Public Address System, Commercial and Aircraft Radio and Design Construction Research. Respondent, in the course and conduct of his said business during the time aforesaid caused, and does now cause, his said courses of study and instruction including lessons, instructional laboratory equipment and other instructional material to be transported from his place of business in Minnesota to, into and through various States of the United States other than Minnesota to the various purchasers thereof located in such other States, and in the District of Columbia.

PAR. 3. During the time above mentioned, other individuals and various firms and corporations located in various States of the United States have been engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Co-

lumbia of courses of study and instruction in "Electronics" including the subjects above mentioned, and in other trade subjects, and also of courses of study and instruction intended for preparing students thereof for various positions, employments, trades, callings and professions, all of which are pursued by correspondence. Respondent now is, and has been during the time aforesaid, in substantial competition with such individuals, firms and corporations in said commerce in the sale of his said courses of study and instruction.

PAR. 4. Respondent, in the course and conduct of said business in said commerce and during the time aforementioned, has, through letters, circulars and catalogs circulated throughout the various States of the United States and in the District of Columbia, and through statements made to prospective students by representatives of the respondent, made various false and misleading representations in regard to said courses of study and matters and things connected therewith. Among the representations so made and used are the following:

1. That the personnel of respondent's school is greater than is actually the fact and that respondent's organization is so extensive as to include and require such divisions as "Laboratory Equipment Division," "Student Welfare Department," "Accounting Department," "Auditing Department," "Student Service Department" and as to include and require such officers as "Publication Director" and "Technical Director."

2. That respondent's school is a residence school, as well as a correspondence school and occupies a large six-story building covering half a city block.

3. That respondent is connected with most of the major electrical companies, airports and radio and police broadcasting stations throughout the United States and that equipment manufactured or invented by respondent is used in major aircraft throughout the United States.

4. That respondent's correspondence course is "Electronic Engineering" or "Engineering" and that the graduates thereof are "Electronic Engineers" or "Engineers."

5. That some of the best engineers in the country collaborate in preparing the course and that a staff of engineers corrects each lesson for inaccuracies.

6. That the students of respondent have the benefit of frequent visits from "Field Engineers" who act in the capacity of traveling teachers or instructors.

7. That home laboratory equipment, including a complete short-wave transmitting and receiving set, of the value of several hundred dollars, is included in the price of tuition, which said equipment respondent furnishes and ships to the student.

8. That respondent supplies batteries to operate the electrical laboratory equipment where no electric current is available.

9. That respondent's airplane equipped with radio devices and respondent's trucks similarly equipped will be flown or driven to the student's home and used for the purpose of testing equipment built by the student.

10. That only a limited number of applicants in each community will be accepted for the training offered by respondent and that the prospective student will be the only one in his community to receive the experimental laboratory equipment.

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11. That persons lacking in education, experience or aptitude can become competent and expert electronic or radio men by taking respondent's course of study and instruction.

12. That the courses of study offered by respondent are full, thorough and complete and include specialized training of a peculiar nature and will make the student an expert or trained electronic engineer upon completion thereof.

13. That a United States Government Radio Operator's License will be issued to the student upon completing respondent's course of study or that said course of study prepares the student to pass an examination for a United States Government Radio Operator's License or to fill high positions in the radio field.

14. That the prospective student will receive remunerative employment or special paying assignments from the respondent or others while taking respondent's courses of instruction or after the completion thereof.

15. That graduates of respondent's school are guaranteed employment and that positions are immediately available in the radio field and more particularly for those persons completing the courses of study offered for sale by respondents.

16. That many graduates of respondent's school are drawing high salaries in the radio field and that several of respondent's graduates are heads of broadcasting stations.

17. That respondent will establish numerous short-wave broadcasting stations throughout the various States and that respondent will establish such a station in the near vicinity of the prospective student; and that the prospective student may work at the broadcasting station to be erected in his vicinity with the engineers employed by respondent to operate said station.

18. That the United States Government is spending large sums of money on the establishment of television stations throughout the various States and that there will be lucrative positions available at such stations for the graduates of respondent's school.

19. That the amount paid by the student before graduation pursuant to the contract of enrollment constitutes a training fee and merely covers the cost of the student's training.

20. That the student by a "deferred tuition" privilege may withhold payment of \$100.00 or \$125.00 of his tuition until he has secured a position.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false and misleading. In truth and in fact the respondent's school is conducted by him with limited personnel, the school's engineering staff consisting of one graduate of an engineering college and three men with practical training in radio and the balance of the school's staff being made up of one commercial artist, one tutor and a clerical force of three who attend to auditing, shipping and mailing. Respondent's school is not a residence school but is a correspondence trade school occupying only a small portion of one floor of the Sexton Building in Minneapolis. The respondent has no connection or affiliation with any electrical companies, radio and police broadcasting stations or airports, nor is any equipment manufactured or invented by respondent used in major aircraft or any aircraft throughout the United States. The instruction offered by respondent is not a complete course in "Electronic Engineering" and does not equip one

to be an "Electronic Engineer" or "Engineer." None of the best engineers in the country have collaborated in preparing respondent's courses of study nor does a staff of engineers correct each lesson for inaccuracies. Respondent's field force is not composed of "engineers" as the members of such field force are not grounded in the engineering sciences nor are they graduates of engineering technical schools but are high school graduates who have received their entire radio or electronic training from respondent's school; and the home experimentation and study of respondent's students is not supervised by such alleged "field engineers," such visits as are made being for the purpose of quieting complaints, making collections and renewing the students' interest so that tuition payments may be kept current. Such laboratory equipment as is furnished his students by respondent for experimental purposes is not of the value of several hundred dollars but may be purchased on the open market for less than \$50 and in some instances respondent has failed to furnish any equipment whatsoever. Respondent does not provide his students with batteries to operate the home electrical equipment furnished where electrical current is not available. Respondent does not visit nor do his agents visit his students at frequent intervals or at all with airplanes and trucks equipped with electrical radio devices for the purpose of testing equipment built by such students. The applicants solicited and accepted by respondent are not limited in number but all available prospects are solicited and accepted. Persons lacking in education, experience or aptitude cannot become competent and expert electronic radio men by taking respondent's courses of study; the courses of study offered by respondent are not full, thorough and complete and do not include specialized training of a peculiar nature and will not make the student an expert or trained Electronic Engineer upon completion thereof. A United States Government Radio Operator's License is not issued to the student upon completion of respondent's courses of study nor is the student prepared to pass an examination for such a license or to fill high positions in the radio field. Respondent does not provide students with remunerative employment or special paying assignments from the respondent or others while taking respondent's courses of study or after the completion thereof. There are not as great a number of students placed in positions as respondent represents, positions are not immediately available upon graduation from respondent's school and respondent does not and cannot fulfill his guarantee of employment. Respondent's graduates are not in many instances filling high positions nor drawing high salaries in the radio field nor are any of the respondent's graduates the heads of broadcasting companies. Respondent has not established nor does respondent intend to establish short-wave broadcasting stations at numerous points throughout the United States and it is contrary to the rules of the Federal Communications Commission to issue a license therefor to a school or to a representative of a school. The United States Government has not appropriated nor is it spending any monies for the establishment of television stations throughout the United States. The amount paid by the student before graduation pursuant to the enrollment contract of the respondent is not merely a training fee covering the cost of the student's training but is the actual tuition and includes the total cost of the course and equipment. The "Deferred Tuition" privilege as represented by the respondent is not a bona fide deferment of a part of the tuition charge but

is simply a "mark-up" used by the respondent to convince prospective students of his assurance of their securing remunerative employment upon completion of respondent's said courses of study. The so-called "training fee" is the charge for tuition, and respondent makes no effort to collect and in fact never has collected the so-called "Deferred Tuition" fee. The price represented by the respondent as the cost of tuition and training is wholly fictitious and greatly in excess of the price for which said courses of study are customarily and regularly sold. Respondent has never sold said courses of study at the price quoted for the tuition and so-called training fee.

PAR. 6. Respondent in advertisements and through statements made by salesmen, represents that a powerful short-wave radio station, W9VXZ, is a part of the operating equipment owned by respondent's school. An example of such representation is an advertisement which appeared in the respondent's catalogue:

NEW N. I. T. TRANSMITTER STATION W9VXZ PART OF N. I. T.'S LABORATORY.

The National Institute of Technology has recently installed a new ultra-modern transmitter. The addition of this new piece of equipment to our laboratories offers a fine opportunity for our students to become acquainted with modern transmitter designs, practice, and operation.

In "Electronotes," a publication issued from time to time and widely distributed by respondent among students and others, there appeared the following references to said short-wave radio station:

Meet the staff of N. I. T. and see our 1,000 watt transmitter.

The tremendous strides N. I. T. has made, the great improvements, and the many additions . . . Ever since the installation of the new transmitter last spring, every effort has been made to keep it abreast of modern developments.

We'll hold a 5-minute DX contest by each student over W9VXZ.

ANOTHER STEP FORWARD. One of the greatest things that happened to N. I. T. since the installation of its 1000-watt transmitter, is the recent purchase of the new Skyriders Dual Diversity Receiving Set. With this addition, it practically leaves nothing to ask for in our station. However, this is not the limit. Greater things are in the making for W9VXZ, and we are really getting set for one of the busiest fall seasons that has ever been planned.

In truth and in fact, the short-wave radio station W9VXZ is not the property of respondent or respondent's school but the license therefor is held by Raymond O. Overby, as trustee for an amateur radio society designated "National Institute of Technology Radio Club" upon a showing made by said Raymond O. Overby, Trustee, to the Federal Communications Commission of control of proper transmitting apparatus and the control of the premises upon which such apparatus was to be located. In truth and in fact, respondent does not now, nor has he at all times mentioned herein, controlled or operated said amateur radio station W9VXZ for the curricular purposes of the school or for any other purpose.

PAR. 7. In the course and conduct of his said business and for the purpose of inducing the purchase of said courses of study and instruction by members of the general public, respondent has adopted and used as a trade

name for his business the name "National Institute of Technology," which name is misleading in that "Institute" is understood by the public to import and imply an organization for the promotion of learning, philosophy, art or science, or an association of technologists for the purpose of considering and solving their problems as such and "Technology" is understood by the public to be the science or systematic knowledge of the industrial arts, especially the more important manufactures. In truth and in fact respondent's school is not an "Institute," as above defined, but is an individual business conducted by him with limited personnel for personal profit, nor is "Technology," as that term is understood by the public, pursued or studied in respondent's said school which in fact is merely a trade school.

PAR. 8. The use by respondent of the foregoing statements and representations, and others of similar import not herein specifically set out, in offering for sale and selling his courses of study and instruction in said commerce, has had, and now has, the tendency and capacity to, and does in fact, mislead prospective purchasers and purchasers thereof into the erroneous and mistaken belief that the representations hereinabove set out are true, and induces them to purchase such courses of study and instruction on account thereof. Thereby trade is unfairly diverted to respondent from competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia of correspondence courses intended for preparing students thereof for electronics or the radio trade.

There are among the competitors of respondent those who in the sale of their respective courses of instruction do not similarly or in any other manner misrepresent their courses of study and instruction or matters pertaining thereto. As a result of respondent's said practices as herein set forth, substantial injury has been, and is now being, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 8, 1941, issued and subsequently served its complaint in this proceeding on the respondent, Thomas J. Casey, an individual, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regu-

larly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief filed in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Thomas J. Casey, is an individual, trading under the name and style of National School of Electronics, with his office and principal place of business at 529 South 7th Street, Minneapolis, Minn. Prior to June 6, 1938, this respondent was engaged in business under the name and style of National Institute of Technology, which name was discontinued pursuant to a stipulation executed by the respondent with the Commission.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction in electronics, photo cells, television, and radio. In the course and conduct of his said business, respondent causes his said courses of study and instruction, including lessons, instructional laboratory equipment, and other material, to be transported from his place of business in the State of Minnesota to purchasers thereof located in various other States of the United States.

PAR. 3. Respondent is now, and during the times mentioned herein has been, engaged in competition with other individuals and with various firms and corporations located in various States of the United States who sell and distribute courses of study and instruction in electronics, including photo cells, television, and radio, in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of his said business and for the purpose of inducing the purchase of his courses of study, said respondent has made various false, deceptive, and misleading statements and representations with reference to his courses of study through sales representatives engaged in soliciting the sale of such courses and through printed matter distributed among prospective students, enrolled students, and others located in the various States of the United States. Among and typical of the false, deceptive, and misleading representations made by the respondent through the means hereinabove described are the following:

1. That the school conducted by the respondent is both a resident and correspondence school and is a large organization composed of various divisions and departments.

2. That persons completing respondent's courses of study will be fully qualified as electrical engineers or as electronic engineers.

3. That respondent maintains a staff of field engineers who call upon students at frequent intervals for the purpose of giving instruction and assisting such students.

4. That in connection with his courses of study the respondent furnishes home laboratory equipment, including a complete short-wave transmitting and receiving set, of the value of several hundred dollars, which is included in the cost of tuition.

5. That respondent selects only a limited number of applicants in each community for his courses of study.

6. That persons lacking in education, experience, or aptitude can become competent and expert electrical or electronic engineers by taking respondent's courses of study and instruction.

7. That positions are immediately available in the radio field to persons who have completed respondent's courses of study.

8. That respondent will establish numerous short-wave broadcasting stations throughout the various States and will establish such a station in the near vicinity of the prospective student for assistance in training such student.

9. That relay television stations will be established throughout the various States and in the near vicinity of the prospective student, making positions available at such stations for graduates of respondent's school.

10. That respondent operates a powerful short-wave radio station as part of the operating equipment of respondent's school.

PAR. 5. In truth and in fact, respondent does not conduct a resident school but is engaged solely in conducting a correspondence school with limited personnel. In addition to respondent, the employees from 1939 to 1941 consisted of approximately 20 or 26 people, including 4 to 6 field instructors and 12 to 16 salesmen, the number of the personnel varying with the season of the year and the amount of business being done and has been greatly reduced since 1941. Respondent's school is not an extensive organization but occupies only a small portion of one floor of the Sexton Building in Minneapolis.

The instruction offered by respondent is not a complete course in electronic or electrical engineering and does not equip one to be an electronic engineer or an electrical engineer.

Respondent sells his courses of study by means of salesmen, who operate under a crew manager, who is, in turn, under a sales manager. These salesmen call on prospective students for the purpose of inducing them to enter into contracts for the purchase of respondent's courses. In addition to the salesmen, respondent employs a number of so-called "field engineers" and "field instructors," who call on students at irregular intervals ostensibly to assist them in their study, but practically to renew the students' interest in the course and to induce payment of delinquent accounts.

The courses of study supplied by the respondent are not such as would qualify a person completing such courses as an electronic engineer or an electrical engineer, as the respondent does not teach higher mathematics or physics, nor could such subjects be taught with sufficient success by correspondence as to qualify a person as an electrical engineer or an electronic engineer.

The laboratory equipment furnished by the respondent in connection with his courses of study consists of tools, tubes, condensers, and other material for the purpose of experimenting in radio operation and construction, and is not of the value of several hundred dollars but amounts to approximately \$50 in value.

The applicants solicited and selected by respondent are not limited in number, but all available prospects are solicited and accepted. Respondent has solicited and accepted high-school students and persons who have not completed high school on the representation that his courses of study would qualify such persons as electrical engineers, electronic engineers, or expert electronic radio men when in fact such persons are lacking in education, experience, or aptitude.

Positions in the radio field are not immediately available for persons completing respondent's courses, as represented by respondent.

The respondent has not established and does not establish short-wave broadcasting stations in various localities for assistance of students taking his courses.

Respondent's representations that relay television stations were to be established in various localities were untrue, as the establishment of such relay stations was not in contemplation or proposed by any broadcasting station nor does it appear from the record in this proceeding that any such relay stations have been established in the vicinity of any student taking respondent's courses.

The respondent does not operate a short-wave broadcasting station in connection with his school. Respondent does own the equipment of radio station W9VXZ, located in the offices of the respondent and operated by Raymond O. Overby as trustee of the Downtown Radio Club, but said station is not used for curricular purposes of respondent's school or for any other purpose connected therewith.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations and others of similar import not specifically set out herein in offering for sale and selling his courses of study and instruction has had, and now has, the tendency and capacity to, and does in fact, mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true and induces them to purchase such courses of study and instruction on account thereof.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence in support of the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief filed in support of the complaint (no brief having been filed by the respondent

and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Thomas J. Casey, an individual, and his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of courses of study and instruction in electronics, photo cells, television, radio, and other similar subjects in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondent's school, which is engaged solely in the distribution of courses of study by correspondence, is a resident school; or otherwise misrepresenting the size and extent of the business conducted by the respondent.

2. Representing that persons completing respondent's courses of study will be fully qualified as electrical engineers, electronic engineers, or engineers generally.

3. Representing that respondent maintains a staff of field engineers who call on students at frequent intervals for the purpose of giving instruction and assisting such students unless calls are made on such students at frequent and regular intervals by instructors qualified to instruct and assist students.

4. Misrepresenting the value or extent of the laboratory equipment furnished to students in connection with the courses of study sold by respondent.

5. Representing that respondent selects only a limited number of applicants in each community for his courses of study.

6. Representing that persons lacking in education, experience, or aptitude can become competent and expert electrical or electronic engineers by taking respondent's courses of study and instruction.

7. Representing that positions are immediately available in the radio field to persons who have completed respondent's courses of study; or otherwise misrepresenting the prospects of employment open to persons taking respondent's courses of study.

8. Representing that respondent will establish short-wave broadcasting stations in the near vicinity of prospective students for assistance in training such students.

9. Falsely representing that relay television stations will be established in the near vicinity of prospective students, making positions available at such stations for persons taking respondent's courses of study.

10. Representing that respondent operates a short-wave radio station as part of the operating equipment of respondent's school unless, in fact, such station is operated and used for curricular purposes of respondent's school.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

HOLZBEIERLEIN & SONS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (d) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5020. Complaint, July 29, 1943—Decision, Aug. 16, 1944

Where a corporation engaged in the manufacture and competitive interstate sale and distribution of its "Bamby" bread to customers competitively engaged with one another in the sale of said product to consumers and to others for resale to consumers;

Paid to a preferred customer \$250.00 a month as compensation for advertising services and facilities contracted to be furnished and furnished by said customer in connection with the sale of its said "Bamby" bread, with the understanding and agreement that said customer would advertise said bread in a weekly newspaper and by hand bills and bulletins; without making payment of advertising allowances available on proportionally equal terms to any other customers competitively engaged in the distribution of its said product:

Held, That such contracts to pay and payments for advertising services and facilities, without making such payments available on proportionally equal terms to other customers competing with said favored customer, constituted violation of Sec. 2 (d) of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. Harry A. Grant, of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described since June 19, 1936, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The respondent, Holzbeierlein & Sons, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1849 Seventh Street, Northwest, Washington, D. C.

PAR. 2. Respondent corporation is now and has been since prior to June 19, 1936, engaged in the business of processing and manufacturing and offering for sale, selling and distributing bakery bread in the several States of the United States and the District of Columbia, and causes said product to be shipped and transported from its place of business to the purchasers thereof who are located in the several States of the United States other than the District of Columbia in which respondent's place of business is located. The respondent distributes its bakery bread under the name of "Bamby Bread." There is and has been at all times mentioned