

## Syllabus

## IN THE MATTER OF

B. L. MELLINGER DOING BUSINESS AS OVRHAUL  
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 3713. Complaint, Feb. 14, 1939—Decision, July 18, 1944*

Where an individual engaged in competitive interstate sale and distribution of its "Ovrhaul" product for use in automotive engines, composed of 25 to 28% of a mineral known as vermiculite in a heavy petroleum oil carrying agent, by advertisements in newspapers, magazines and other media, directly and by implication—

Falsely represented that use of his product in an automobile motor was the equivalent of overhauling the motor; that it checked piston slap and oil pumping, filled scores in the piston surfaces and cylinder walls, effected a substantial saving in oil consumption and substantially increased gasoline mileage, resulted in substantial savings in motor upkeep by making rebores and new ring jobs unnecessary; avoided the laying up of cars for repairs, put a "mineral plating" on worn parts, and restored or increased the power and "pep" of such motors;

The facts being, as established by tests by the Bureau of Standards, that use of the product has no beneficial effect upon the operation of the motor, any adhesive property which vermiculite might have was insufficient to plate metal surfaces or otherwise affect them to any material extent, and, while its use might result in increased compression pressure, such result, like that produced by carbon deposits, was due entirely to increase of deposits on the piston head and in the combustion chamber, and tended to decrease rather than increase power;

With tendency and capacity of misleading and deceiving a substantial portion of the purchasing public with respect to said product and its results, whereby such public was caused to purchase substantial quantities of said product, and substantial trade was diverted unfairly to him from his competitors:

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

As respects the validity of claims in behalf of a product for use in automobile motors, use of which allegedly was the equivalent of and avoided the need for overhauling and reboring the motor and resulted in putting a mineral plating on worn parts and in restoring and increasing the motor's power and pep: Evidence in behalf of their validity consisting of road tests—generally inconclusive due to presence of a number of uncontrollable factors, such as temperature, wind, grade, traffic, surface, kind of tires, etc.—chassis dynamometer tests—which, though some of said factors are eliminated, cannot be considered as approximating in accuracy tests made by means of laboratory dynamometer and other testing equipment used by the National Bureau of Standards—testimony of automobile mechanics and members of the public—not all of whom experienced favorable results with the product—was insufficient to meet evidence introduced in support of the complaint consisting of a series of tests by said Bureau, for the more important of which the motors were supplied by the seller and claimant, and the application

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of the product to the motors was done by his technical representative, results of which tests established that the use of the product had no beneficial effect upon the operation of an automotive engine,—conclusion supported also by the testimony of a number of witnesses who qualified as experts in the automotive engineering field.

Before *Mr. Miles J. Furnas* and *Mr. Webster Ballinger*, trial examiners.  
*Mr. S. Brogdyne Teu, II* for the Commission.

*Mr. Dudley W. Strickland*, of Denver, Colo., and *Mr. Bertrand Rhine*, of Los Angeles, Calif., 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 B. L. Mellinger, an individual, trading under the firm name and style of Ovrhaul Co., 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. Respondent, B. L. Mellinger, is an individual, doing business under the firm name and style of Ovrhaul Co., with his principal office and place of business located at 3706 Broadway, in the city of Kansas City, State of Missouri. For more than one year last past, said respondent has been and now is engaged in the business of offering for sale, selling and distributing a product, under the trade name Ovrhaul, in commerce among and between the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent has caused and causes said product, when sold or ordered, to be shipped and transported from his aforesaid place of business to purchasers thereof located in States other than the State of Missouri, and in the District of Columbia.

PAR. 2. In the course and conduct of his business as aforesaid, respondent has been and now is in competition with other individuals, and with partnerships and corporations engaged in the business of offering for sale, selling and distributing products used or useful as a gas and oil saver and reconditioner of worn automobiles in commerce among and between the various States of the United States and in the District of Columbia. Among said competitors are many who truthfully represent the efficacy of their products.

PAR. 3. In the course and conduct of his business as aforesaid, and for the purpose of inducing the purchase of his Ovrhaul product, respondent has caused certain advertising to appear in newspapers and magazines and in other forms of advertising matter, all of which are circulated among purchasers and prospective purchasers located in the various States of the United States and in the District of Columbia. Among the representations appearing in said advertising matter, the following is representative:

## Complaint

FREE

To Opportunity  
Magazine Readers

I will send you a  
FREE SAMPLE to  
DEMONSTRATE the  
ASTOUNDING ACTION of  
OVRHAUL!  
Just Mail Coupon!

|   |           |
|---|-----------|
| : | :         |
| : | Picture   |
| : | B. L.     |
| : | Mellinger |
| : | :         |

B. L. MELLINGER  
President  
OVRHAUL COMPANY.,  
quits million  
dollar tire business  
to merchandise  
OVRHAUL, to train and  
build the finest sales  
organization of its  
kind in the country.

OVERHAULS MOTORS AT 95% SAVING

Fortunes Come Quick With Ovrhaul  
Tremendous Sales  
BIG PROFITS

PROVED BY  
DISTRIBUTORS  
EVERYWHERE

A money-making  
opportunity to men  
of vision and  
ambition.

OVRHAUL goes over with wondrous success. Large service stations and garages now feature it. Distributors see its unlimited profits. It sells readily because thousands of autos, trucks, tractors, airplanes, and motor boats need OVRHAUL.

Overwhelming is the story of this NEW SCIENTIFICALLY APPROVED PRODUCT called OVRHAUL. Over 100,000 motorists HAVE USED IT—Millions WANT IT—and for salesmen and distributors OVRHAUL BRINGS THE GOAL OF BIG MONEY—A PERMANENT, PROFITABLE, GROWING BUSINESS because it

1. Makes new ring and rebore unnecessary.
2. Bring back "new car" pep, power, quiet.
3. Checks piston slap and oil pumping.
4. Restores compression, fills scores.
5. Saves up to 50% on oil.
6. Adds up to 45% more gas mileage.
7. Pays for itself in oil and gas savings.

OVRHAUL users prove amazing savings in motor upkeep costs. Motorists and truck owners need no longer pay up to \$150 for a rebore or new ring job or lay up their cars. Gas and oil saving is spectacular. OVRHAUL is astounding, yet every statement is backed by FACTS AND PROOF. The remarkable story of OVRHAUL is the outgrowth of many years research and study. First, a miner makes a strange new mineral discovery far up in the Rocky Mountains. Its unusual action fascinated him. Samples were submitted to the Bureau of Mines, Washington, D. C., and the State School of Mines. Thousands of tests were made by chemists and engineers. The result is OVRHAUL, a revolutionary new scientific way of motor reconditioning.

It is so amazing in results achieved and low cost that it has astounded engineers and car owners and turned thousands into boosters. It puts a mineral "plating" on the worn parts, thus restoring compression and proper engine efficiency. Its low cost is a revolution in value. Within a few months over 100,000 OVRHAUL were eagerly bought by motorists everywhere.

Can you afford to allow yourself NOT to take advantage of this wonderful money making opportunity OVERHAUL presents to YOU? Desirable territories are being "snapped up". Enormous profits ARE BEING made with OVRHAUL—why not get your share? No experience necessary as we show you how.

PAR. 4. Through the use of said statements and representations herein above set forth, and others similar thereto not herein set out, all of which purport to be descriptive of respondent's product and the opportunities available to distributors thereof, respondent has grossly misrepresented and exaggerated the efficiency of said product and the nature of the opportunities available to the distributors thereof. By the means and in the manner aforesaid the respondent represents that he will give one sample of said product free and without cost or condition to persons becoming distributors thereof.

In truth and in fact, the respondent does not give a free sample to persons becoming distributors of his product. It is necessary to purchase one unit of the product Ovrhaul in order to secure one without additional cost.

The respondent, through the statements and representations herein set out, has represented that fortunes can be made quickly with Ovrhaul; that tremendous sales and big profits are possible and that such has been proven by distributors everywhere; that Ovrhaul enables one to achieve wondrous success in sales; that large service stations and garages feature it and dealers see unlimited profits in selling it; that said product sells readily; that more than 100,000 motorists have used it and millions of others want it; and that it brings to salesmen and distributors the goal of big money, and enables them to build a permanent, profitable, growing business.

In truth and in fact, the foregoing representations made by the respondent are false, deceptive and untrue. Fortunes cannot be made quickly with Ovrhaul; tremendous sales and big profits are not possible; Ovrhaul does not enable one to achieve success, "wondrous" or otherwise, in sales; large service stations and garages do not feature it and dealers do not see unlimited profits in selling it, nor does it sell readily; 100,000 motorists have not used said product nor do millions of others want it; and it does not bring to salesmen and distributors big money, and it does not enable them to build a permanent, profitable, growing business.

The respondent has also represented through the use of said statements and representations heretofore set out that the story of Ovrhaul is the story of a new, scientifically approved product; that the use of Ovrhaul makes new rings and rebore unnecessary; bringing back "new car" pep, power and quietness, checking piston slap and oil pumping; restoring compression and filling scores in the pistons; that its use will save up to 50% in oil and add up to 45% more gasoline mileage, paying for itself in oil and gasoline savings; that it makes for amazing savings in motor upkeep and motorists and truck owners are able to avoid the payment for rebores and new ring jobs. The respondent has further represented that through the use of Ovrhaul motorists can avoid the necessity of laying up their cars for repairs; that Ovrhaul is an astounding product and the story of it is the story of the outgrowth of many years of research and study; that miners made the discovery of Ovrhaul and thousands of tests have been made by chemists and engineers and Ovrhaul is a revolutionary scientific way of motor reconditioning and that the results achieved by its use and its low cost have astounded engineers and car owners; that it has turned thousands of users into boosters; and that it puts a mineral "plating" on worn parts and restores compression.

In truth and in fact, the foregoing representations made by the respondent are false, deceptive and untrue. The story of the product Ovrhaul is not the story of a new, scientifically approved product, for it has not received scientific approval. The use of the product will not make new piston rings and cylinder rebores unnecessary, nor does it bring back "new car" pep, power and quietness. The use of the product Ovrhaul will not check piston slap or oil pumping, nor does it restore compression in the cylinders or fill scores in cylinder walls. Its use in an engine will not save up to 50% in oil and will not add up to 45% more gasoline mileage, nor will its use result in any substantial savings in oil or any substantial increase in gasoline mileage, and it will not pay for itself in oil and gasoline savings. The product Ovrhaul is not an "astounding" product and it is not the outgrowth of many years of research and study, and it was not discovered by miners. Chemists and engineers have not made thousands of tests of the product Ovrhaul and the product is not a revolutionary scientific way of reconditioning motors. The results achieved by its use or its low cost have not astounded engineers or car owners and it is not boosted by thousands of users. Its use does not put a mineral "plating" on worn parts of an engine.

Through the use of the above and foregoing representations, the respondent grossly and misleadingly exaggerates the efficiency of said product Ovrhaul as a gasoline and oil saver and as a reconditioner of worn gasoline motors, and the amount of money that may be earned by distributors of said product.

PAR. 5. The aforesaid statements and representations made by the respondent in connection with the offering for sale and sale of its product have had, and have, the tendency and capacity to, and do, mislead and deceive purchasers and prospective purchasers thereof into the false and erroneous belief that the said statements and representations are true, and thus have induced the purchase of said product in reliance upon such beliefs induced as aforesaid. As a result, trade in said commerce has been, and is, diverted unfairly to respondent from those of his competitors who

truthfully represent their products and who do not engage in the practices herein alleged. In consequence thereof, substantial injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice 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 February 14, 1939, issued and subsequently served its complaint in this proceeding upon the respondent, B. L. Mellinger, an individual, trading under the name Ovrhaul Co., 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 that act. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before trial examiners of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiners upon the evidence, and briefs in support of and in opposition to the complaint (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, B. L. Mellinger, is an individual, trading under the name Ovrhaul Co., with his principal office and place of business located at 679 South Dunsmuir Drive, Los Angeles, Calif. He is now and for some nine years last past has been engaged in the sale and distribution of a product intended for use in automotive engines and designated by the trade name "Ovrhaul."

PAR. 2. Respondent causes and has caused his product, when sold, to be transported from his place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution, in commerce among and between the various States of the

United States and in the District of Columbia, of preparations and devices designed for substantially the same purposes as those for which respondent's product is designed.

PAR. 4. In the course and conduct of his business and for the purpose of inducing the purchase of his product, respondent has made certain representations and claims for his product in advertising disseminated by means of newspapers, magazines and other media, all of which are circulated among prospective purchasers located in the various States of the United States and in the District of Columbia. Among and typical of such representations and claims are the following:

#### OVERHAULS MOTORS AT 95% SAVING

\* \* \*

Overwhelming is the story of this NEW SCIENTIFICALLY APPROVED PRODUCT called OVRHAUL. \* \* \*

1. Makes new ring and rebore unnecessary.
2. Brings back "new car" pep, power, \* \* \*.
3. Checks piston slap and oil pumping.
4. Saves up to 50% on oil.
5. Adds up to 45% more gas mileage.
6. Pays for itself in oil and gas savings.
7. Restores compression, fills scores.

OVRHAUL users prove amazing savings in motor upkeep costs. Motorists and truck owners need no longer pay up to \$150 for a rebore and new ring job or lay up their cars. Gas and oil saving is spectacular. OVRHAUL is astounding, yet every statement is backed by FACTS AND PROOF. The remarkable story of OVRHAUL is the outgrowth of many years research and study. First, a miner makes a strange new mineral discovery far up in the Rocky Mountains. \* \* \* Thousands of tests were made by chemists and engineers. The result is OVRHAUL, a revolutionary new scientific way of motor reconditioning.

It is so amazing in results achieved and low cost that it has astounded engine and car owners \* \* \*. It puts a mineral "plating" on the worn parts, thus restoring compression and proper engine efficiency \* \* \*. (Tr. pp. 264-265)

PAR. 5. Through the use of these statements and others of a similar nature, respondent has represented, directly or by implication, that the use of his product in an automobile motor is the equivalent of overhauling such motor; that the product checks piston slap and oil pumping, and fills scores in the piston surfaces and cylinder walls; that it effects a substantial saving in oil consumption and substantially increases gasoline mileage; that it results in substantial savings in motor upkeep by making rebores and new ring jobs unnecessary; that it avoids the laying up of cars for repairs; that it puts a "mineral plating" on worn parts; and that it restores or increases the power and "pep" of automobile motors.

PAR. 6. Respondent's product is composed of a heavy petroleum oil and a mineral known as vermiculite, the latter ingredient constituting from 25% to 28% of the total content. The oil is merely the vehicle or carrying agent for the vermiculite and no virtue is claimed for it by respondent insofar as any effect on an automobile motor is concerned. Respondent's

claims are based entirely upon the vermiculite content of the product. The product is packed in collapsible metal tubes and is applied to the motor by squeezing a portion of the contents of the tube into each cylinder of the motor after the spark plugs have been removed. To facilitate the application, a small rubber hose or tube is supplied by respondent with each tube of the product.

Respondent's directions for the application of the product are substantially as follows:

First be sure that motor is warm but not hot. Remove all spark plugs. Take compression of each cylinder with compression gauge, by turning motor over with starter until indicator on compression gauge will not go any higher. Repeat this with each cylinder. Have gas throttle wide open while making compression tests.

Then divide contents of tube equally between cylinders, placing Ovrhaul directly on TOP of pistons. See illustration for your type of engine on other side. Avoid placing Ovrhaul on valves or allowing to drip on threads in spark plug openings. Wipe off rubber tube after installing in each cylinder. After installing turn motor over one minute, before replacing plugs, with the ignition OFF. Then allow motor to stand FIVE minutes to give the material an opportunity to drain down into place. Replace all spark plugs. Then start motor, without racing, and idle for TWENTY minutes as slow as possible. This does not mean nineteen minutes. It means TWENTY minutes at idling speed. Above all, do not—RACE—motor during this time. It is then best to cover the radiator and get motor HOT. Additional idling for an hour or two is helpful in many cases. This gives Ovrhaul an opportunity to expand and "WORK-IN." Then drive slowly—not over THIRTY miles per hour for about 30 miles. After this, normal driving can be resumed. Continuous driving during the 400-mile period is not necessary. (Com. Ex. No. 89)

PAR. 7. Vermiculite is a hydrous mica. Its principal property or characteristic is that it expands and exfoliates when subjected to sufficient heat. Respondent insists that it also has the property of adhering to or "plating" metal surfaces. Essentially, the theory upon which respondent asserts the merit of his product appears to be that when placed in the cylinders of an automobile motor the product acts as a packing, expanding or exfoliating and attaching itself to the piston rings and cylinder wall; that it thus improves the relation between the piston rings and cylinder wall and eliminates or reduces "blowby," that is, the gases which get by the piston rings on the compression and power strokes of the piston and escape from the combustion chamber into the crankcase; and that, in consequence, the compression and power of the motor are restored or increased, the installation of new piston rings and the reboring of the cylinders rendered unnecessary, substantial savings in oil and gasoline effected, etc.

PAR. 8. At the request of the Commission, a series of tests of respondent's product were made by the National Bureau of Standards, and the results of these tests form a part of the record in this proceeding. The automobile motors used in the more important of the tests were supplied by respondent, and the application of the product "Ovrhaul" to the motors was done by a technical representative of respondent. The results of the tests establish that the use of the product has no beneficial effect upon the operation of an automotive engine, and this conclusion is supported also by the testimony of a number of witnesses who qualified as experts in the automotive engineering field. There is serious doubt

whether the temperature of an automobile motor in operation is sufficient to cause vermiculite to exfoliate to any appreciable degree, but whatever may be the extent of the exfoliation, it has no beneficial effect upon the motor. Likewise, any adhesive property which vermiculite may have is insufficient to "plate" metal surfaces or otherwise affect them to any material extent. While the use of "Ovrhaul" may result in increased compression pressure, such result is due entirely to the fact that the presence of the product tends to increase deposits on the piston head and in the combustion chamber, with a consequent reduction in the volume of the combustion chamber. The effect is substantially the same as that produced by deposits of carbon. The increase in compression pressure brought about by the use of "Ovrhaul" therefore does not result in increased power; rather, it would tend to have the opposite effect.

A substantial volume of evidence in opposition to these conclusions was introduced by respondent, including the results of certain road and laboratory tests made of the product at respondent's instance, as well as tests made by means of a chassis dynamometer. There was also testimony by several expert witnesses in support of respondent's position, as well as testimony by a number of automobile mechanics and members of the public who had used respondent's product. As to the road tests, the record shows that such tests are generally inconclusive, due principally to the presence of a number of factors which cannot be controlled, such as temperature, wind, grade, traffic, surface, kind of tires, etc. In the case of chassis dynamometer tests, some of these factors are eliminated but others remain, and such tests cannot be considered as approximating in accuracy tests made by means of a laboratory dynamometer and the other testing equipment used by the Bureau of Standards. The laboratory tests relied upon by respondent, while undoubtedly of greater value than the road and chassis dynamometer tests, were not, in the opinion of the Commission, as comprehensive or accurate as those made by the Bureau of Standards. The testimony of the automobile mechanics and members of the public as to their experience with respondent's product is, in the opinion of the Commission, entitled to little weight in view of the large volume of scientific evidence in the record. Moreover, not all of the mechanics and laymen testifying in the proceeding experienced favorable results with the product, some of them testifying to the contrary. After considering all of the evidence introduced by respondent, the Commission is of the opinion that it is insufficient to meet the evidence introduced in support of the complaint.

PAR. 9. The Commission therefore finds that the representations made by respondent with respect to his product, as set forth in paragraphs 4 and 5 hereof, are erroneous and misleading. The use of the product in an automobile motor is not the equivalent of overhauling such motor. The product is incapable of checking piston slap or oil pumping, and is likewise incapable of filling scores in the piston surfaces and cylinder walls. It does not effect any saving in oil or gasoline consumption, nor increase gasoline mileage. The use of the product does not render unnecessary the reboring of cylinders or the installation of new piston rings, nor does it avoid the laying up of automobiles for repairs. It does not plate worn parts. It is incapable of restoring or increasing the power or "pep" of an automobile motor.

PAR. 10. The use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a

substantial portion of the purchasing public with respect to the properties and characteristics of respondent's product and the results which may be obtained through the use of the product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the product as a result of the erroneous and mistaken belief so engendered. In consequence, substantial trade has been diverted unfairly to respondent from his competitors, among whom are those who do not misrepresent their products.

#### CONCLUSION

The acts and practices of the respondent, as herein found, are all to the prejudice 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, the answer of respondent, testimony and other evidence taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence, and briefs in support of and in opposition to the complaint (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, B. L. Mellinger, individually, and trading as Ovrhaul Company, or trading under any other name, and his 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 respondent's product designated "Ovrhaul," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from representing, directly or by implication:

1. That the use of said product in an automobile motor is the equivalent of overhauling such motor.
2. That said product checks piston slap or oil pumping.
3. That said product fills scores in piston surfaces or cylinder walls, or plates worn parts.
4. That said product reduces oil or gasoline consumption, or increases gasoline mileage.
5. That the use of said product renders unnecessary the reboring of cylinders or the installation of new piston rings, or that it avoids the laying up of automobiles for repairs.
6. That said product restores or increases the power or "pep" of an automobile motor.

*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.

Complaint

IN THE MATTER OF

RUDOLF LESCH FINE ARTS, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 4693. Complaint, Feb. 3, 1942—Decision, July 19, 1944*

Where six corporations engaged in the publication and interstate sale and distribution of art pictures, prints, etchings, reproductions of paintings and allied products, among the leaders in the industry concerned and doing a substantial portion of the business done by the entire industry and in competition with one another except in so far as said competition had been hindered, lessened and restrained as a result of the acts and practices set forth below; as a result of certain meetings, of which those who did not attend were kept informed and to the decisions reached wherein they assented—

- (a) Agreed upon discounts to be allowed public institutions, school dealers, and semi-jobbers, and decided a jobbing discount would be allowed only in those cases where they had agreed that purchaser concerned was a wholesaler, or where purchaser furnished an affidavit to the effect that at least 75 per cent of his business was wholesale; and
- (b) Prepared and distributed, from lists supplied by the different concerns, a master list of wholesalers agreed upon by them and similar lists of school dealers and semi-jobbers, and, except for isolated instances, adhered to their said classifications and maintained the agreed discounts for the several classes of purchasers, in a number of instances requiring affidavits from prospective purchasers claiming to be wholesalers and in some instances taking certain of said concerns to task because of their alleged failure to maintain their schedule of discounts;

With effect of unduly and unlawfully hindering, lessening and restraining competition among them in the sale and distribution in commerce of art pictures, prints, etchings, reproductions of paintings, and allied products, and with tendency and capacity so to do:

*Held*, That said acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair methods of competition in commerce.

Before *Mr. Clyde M. Hadley*, trial examiner.

*Mr. George W. Williams* for the Commission.

*Mr. Albert Hirst*, of New York City, for Rudolph Lesch Fine Arts, Inc.

*Mr. Edwin R. Monnig* and *Mr. Harold Goodman*, of Detroit, Mich., for International Art Publishing Co., Inc.

*Purdy & Lamb*, of New York City, for International Frame & Picture Co., Inc.

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 Com-