

IN THE MATTER OF
LATHEM TIME RECORDER COMPANY ET AL.

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

Docket 5713. Complaint, Dec. 1, 1949—Decision, Feb. 6, 1953

Where a corporation and its three officers, who were engaged in manufacturing, servicing and repairing, and in the competitive interstate sale and distribution of, clocks and other time-recording instruments, including particularly watchman's clocks, and who, by virtue of the former business activities of the corporate president, were in possession of a list of 18,000 names or more in which was included information of every watchman's clock which had passed through their shop since 1919; and during a period in which said president's former partnership was agent for other manufacturers, competitively engaged;

In carrying on their corporate business since 1946, in the course of which they made such statements in circular letters as "We have not cleaned, oiled or adjusted your night watchman's clock within two years" * * * "may we send you a loan clock like yours, without rental charge, to use while yours can be sent here for inspection, oiling or repairs" * * * "we will appreciate hearing from you on the attached card. Please reply"—

- (a) Represented falsely, directly and by implication, that they had previously cleaned, oiled and adjusted the watchman's clocks of all those to whom the aforesaid form letters were addressed;
- (b) Represented falsely that they had kept a record of the dates on which such clocks were cleaned, oiled or adjusted; when they could not legitimately have done so;
- (c) Represented falsely, through concealing or obscuring in many instances, the name of the manufacturer of the clock, possession of which they thus secured, and by placing their own name thereon, that they were the manufacturers of the clocks, and that they were successors or representatives of competitive watchman's clock manufacturers; and
- (d) Represented through the statement "We will allow you a 20 percent discount on service work now" that the addressees of the said letters would receive a special discount if they sent their watchman's clocks to respondents for cleaning, oiling or repairing; the facts being the prices they charged were the usual and customary ones for such services;

With tendency and capacity to mislead and deceive a substantial portion of the owners and users of watchman's clocks made by respondents competitors, and of causing such owners and users to send such clocks to respondents for servicing; and with effect of placing them in a position, through thus deceptively obtaining possession of a clock made by a competitor, to point out to the owners the defects of the particular product and the claimed

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superiority of their own, and thus to enhance the sale of their own product, whereby trade was unfairly diverted from their competitors:

Held, That such acts and practices, under the circumstances set forth, constituted unfair and deceptive acts and practices in commerce, and unfair methods of competition therein.

Before *Mr. John W. Addison*, hearing examiner.

Mr. Joseph Callaway for the Commission.

Mr. Robert P. McLarty, of Atlanta, Ga., for respondents.

COMPLAINT¹

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 Lathem Time Recorder Company, a corporation, and Louis P. Lathem, Sr., Louis P. Lathem, Jr., and Harrison G. Hooper, individuals, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Lathem Time Recorder Company is a corporation organized and doing business under and by virtue of the laws of the State of Georgia with its office and principal place of business located at No. 76 Third Street, N. W., Atlanta, Georgia.

The individual respondents Louis P. Lathem, Sr., Louis P. Lathem, Jr., and Harrison G. Hooper are respectively president-treasurer, vice president and secretary of the corporate respondent. These individual respondents also have their offices at No. 76 Third Street, N. W., Atlanta, Georgia, and at all times hereinafter mentioned formulated, directed and controlled the acts, policies and business affairs of the corporate respondent.

¹The complaint is published as amended by an order of the Commission dated May 26, 1950, as follows:

This matter coming before the Commission upon stipulation of counsel, which stipulation provides that subject to the approval of the Commission the complaint heretofore issued herein may be considered as amended by substituting the name "Lathem Time Recorder Company" for the name "Lathem Watchman's Clock Company" wherever same appears in the caption of the complaint and the body thereof; that this matter may proceed under the new caption; that all the respondents in the complaint as amended waive service and enter their appearance to the complaint as amended; and that the answer to the complaint as originally issued may be considered as answer to the complaint as amended, and the Commission having duly considered said stipulation and the record herein and being now fully advised in the premises:

It is ordered, That the complaint heretofore issued herein be amended by substituting the name "Lathem Time Recorder Company" for the name "Lathem Watchman's Clock Company" wherever same appears in the caption of the complaint and the body thereof and that this matter proceed under the new caption.

PAR. 2. Respondents are now, and have been for the past several years, engaged in the business of manufacturing, selling, servicing and repairing clocks and other time-recording instruments. Among the time-recording instruments manufactured, sold, serviced and repaired by respondent is what is known as a watchman's clock in which a single clock contains apparatus for recording the time of visiting several different stations or places. Respondents cause such clocks and time-recording devices when sold, serviced or repaired by them to be transported from their place of business in the State of Georgia to the purchasers or owners thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said business in commerce among and between the various States of the United States. Respondents' volume of said business in said commerce is substantial.

PAR. 3. Respondents are now, and have been at all times hereinafter mentioned, in substantial competition with other persons, firms and corporations likewise engaged in the manufacture, interstate sale, service and repair of watchmen's clocks.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of their products and services, respondents have engaged in the following acts and practices:

(a) Respondents have sent many letters to users and owners of watchman's clocks manufactured by their competitors. Typical of the statements contained in such letters are the following:

We have not cleaned, oiled or adjusted your night watchman's clock within two years.

This expensive equipment will wear fast if allowed to run dry. No oil will last longer than two years in a watchclock.

May we send you a loan clock like yours, without rental charge, to use while yours can be sent here for inspection, oiling or repairs.

We will allow you a 20 percent discount on service work now.

If you have less than half a box of paper record dials let us send another box, don't run out.

We will appreciate hearing from you on the attached card. Please reply.

(b) When watchman's clocks manufactured by respondents' competitors were sent to respondents for cleaning, oiling, adjusting or repairs, respondents in many instances removed or mutilated labels, tags and other marks of identification of the manufacturers of such clocks, substituting their own in lieu thereof.

PAR. 5. Through the acts and practices above set forth respondents represented directly and by inference, that they had previously cleaned, oiled and adjusted watchman's clocks in the possession of all those to whom the above mentioned letters were addressed; that respondents had kept a record of the dates when such clocks were

cleaned, oiled or adjusted; that respondents were the manufacturers of watchman's clocks to which their marks of identification were attached; that respondents were successors to or representatives of competitive watchman's clock manufacturers and that the addressees of the said letters would receive a special discount on the price of respondent's services if watchman's clocks were sent to respondents for cleaning, oiling and adjusting without delay.

PAR. 6. The aforesaid statements and representations were false and misleading. In truth and in fact, respondents had not previously cleaned, oiled or adjusted any watchman's clocks in the possession of many of those to whom the above mentioned letter was sent. Respondents could not legitimately have had any record of the dates when such clocks were cleaned, oiled or adjusted. Respondents were not the manufacturers of the watchman's clocks to which they attached their marks of identification as above set forth. Respondents were not successors to or representatives of any competitive watchman's clock manufacturers. The prices charged by respondents for their services in cleaning, oiling and adjusting watchman's clocks, that were sent to them in response to the aforesaid letters, were the regular prices charged by respondents for such services.

PAR. 7. Among manufacturers of watchman's clocks the cleaning, oiling, adjusting and repairing of such clocks as they have sold is an important part of the business, in some instances accounting for approximately one-half the revenue of the manufacturer.

PAR. 8. The use by the respondents of the aforesaid unfair and deceptive acts and practices in connection with their business had had and now has the capacity and tendency to mislead and deceive a substantial portion of the owners and users of watchman's clocks made by respondents' competitors and has caused them to send such watchman's clocks to respondents for cleaning, oiling, adjusting and repairing and to purchase new watchman's clocks from respondents. As a result thereof, trade has been unfairly diverted from respondents' competitors.

PAR. 9. The above and foregoing practices of respondents are all to the prejudice and injury of the public and respondents' competitors and constitute unfair and deceptive acts and practices and unfair competition within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 1, 1949, issued and subsequently served its complaint in this proceeding upon Lathem Watch-

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man's Clock Company, a corporation, and Louis P. Lathem, Sr., Louis P. Lathem, Jr., and Harrison G. Hooper, individually and as officers of Lathem Watchman's Clock Company, charging them with the use of unfair and deceptive acts and practices and unfair competition in commerce in violation of the provisions of said Act. Thereafter, on May 26, 1950, said complaint was amended, pursuant to a stipulation between counsel, by substituting the name "Lathem Time Recorder Company" for the name "Lathem Watchman's Clock Company" wherever same appears in the caption of the complaint or in the body thereof. After the issuance of said complaint and order amending same and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing 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 regularly came on for final consideration by said hearing examiner upon the complaint, answer thereto, testimony and other evidence, and proposed findings presented by counsel, and said hearing examiner, on September 6, 1951, filed his initial decision in which he ordered that the complaint be dismissed without prejudice to the right of the Commission to institute further proceedings should future facts warrant.

Within the time permitted by the Commission's Rules of Practice, counsel supporting the complaint filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record, including briefs and oral argument of counsel in support of and in opposition to said appeal; and the Commission, having entered its order granting said appeal and disposing of the exceptions to the hearing examiner's initial decision, 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 conclusion drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Lathem Time Recorder Company is a corporation organized and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 76 Third Street, N. W., Atlanta, Georgia.

The individual respondents, Louis P. Lathem, Sr., Louis P. Lathem, Jr., and Harrison G. Hooper, are, respectively, president-treasurer, vice-president, and secretary of the said Lathem Time Recorder Com-

pany. These individual respondents also have their offices at 76 Third Street, N. W., Atlanta, Georgia, and at all times mentioned herein have formulated, directed, and controlled the acts, policies, and business affairs of said corporate respondent.

Respondents, in the course and conduct of their business, as hereinafter described, used the trade name "Lathem Watchman's Clock Company."

PAR. 2. Respondents are now, and have been for the past several years, engaged in the business of manufacturing, selling, servicing, and repairing clocks and other time-recording instruments. Among the time-recording instruments manufactured, sold, serviced, and repaired by respondents is what is known as a watchman's clock, in which a single clock contains apparatus for recording the time of visiting several different stations or places. Respondents cause such clocks and time-recording devices, when sold, serviced, or repaired by them, to be transported from their place of business in the State of Georgia to the purchasers or owners thereof located in the various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said business in commerce among and between the various States of the United States. Respondents' volume of said business in said commerce is substantial.

Respondents are now, and have been at all times herein mentioned, in substantial competition with other persons, firms, and corporations likewise engaged in the manufacture, interstate sale, service, and repair of watchman's clocks.

Although the acts and practices of the respondents hereinafter described were engaged in, principally, in connection with the servicing and repairing, and the soliciting of orders for the servicing and repairing, of watchman's clocks, the effect of such acts and practices has been to give the respondents an unfair advantage in the sale of new watchman's clocks, as well as an unfair advantage in obtaining the business of servicing and repairing such clocks.

PAR. 3. The individual respondent Louis P. Lathem, Sr., has been engaged in the business of selling, servicing, and repairing watchman's clocks since 1919, first as a member of a partnership with his father under the trade name of "Lathem Watchman's Clock Company" and since 1946 as an officer of respondent corporation, Lathem Time Recorder Company. The partnership was at times agent for other manufacturers of watchman's clocks who are at present competitors of respondents. For some of such concerns, respondents not only sold watchman's clocks but also serviced them. Among other watchman's clocks sold by the partnership were Detex Watchclocks

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and Chicago Watchclocks. During the time that the partnership represented other concerns who are now competitors of respondents, they did not manufacture watchman's clocks, although they did sell a few under their own name in 1928, 1929, and the late 30's. During all of the period of time from 1919 until the present, a list has been kept with all pertinent information of every watchman's clock passing through the shop of first the partnership and since 1946, the shop of the corporate respondent. This list has been continuous since 1919 and now consists of 18,000 names or more.

Since the corporate respondent was organized in 1946 it has sent out at different times a form letter to all the names on the above-mentioned list and also to other concerns who respondents had reason to believe used watchman's clocks, whether or not such clocks had ever been in respondents' shop. Said form letter was as follows:

We have not cleaned, oiled or adjusted your night watchman's clock within two years.

This expensive equipment will wear fast if allowed to run dry. No oil will last longer than two years in a watchclock.

May we send you a loan clock like yours, without rental charge, to use while yours can be sent here for inspection, oiling or repairs.

We will allow you a 20% discount on service work now.

If you have less than half a box of paper record dials let us send another box, don't run out.

We will appreciate hearing from you on the attached card. Please reply.

The sentence "We will allow you a 20% discount on service work now" was omitted from form letters sent out after May 23, 1949.

Watchman's clocks manufactured by respondents' competitors sent to respondents for servicing or repairing have in many instances had the name of the manufacturer concealed or obscured when returned to the owners. In many instances, the time face dial bearing the name of the manufacturer has been covered with a time face dial bearing no name. In some instances the time face dial was mutilated and needed replacing, and in some instances it did not. In addition to obscuring the name of the maker on the time face dial, the name of the maker on the inside of the clock was obscured or concealed by reversing the plate bearing the name and address of the maker. On the blank side of such plate the respondents bradded a metal plate bearing the inscription:

FOR
PAPER RECORD DIALS—REPAIRS
Write or Wire
LATHAM WATCHMAN'S CLOCK CO.
76 Third St., N. W. Atlanta, Ga.

In some instances the metal plate bearing the inscription quoted above was bradded over the face of the plate bearing the name of the

