

Complaint

39 F. T. C.

IN THE MATTER OF
HOWARD CLOCK CORPORATION

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

Docket 5119. Complaint, Jan. 24, 1944—Decision, Oct. 9, 1944

Where the name "Howard," developed and used since 1842 by the original founders of the E. Howard Watch Clock Co. and its successors to identify the watches and clocks sold by them, had become widely and favorably known to the purchasing public for the high standards of workmanship and quality of the products sold under that name, whereby manufacturers of said products had come to enjoy a profitable business and substantial good-will; and thereafter a corporation engaged in the manufacture, sale and distribution of an electric clock—

Represented, directly and by implication, through the use of the word "Howard" in its corporate name, in such statements in its advertising matter as "The famous HOWARD," "The dependable Howard," "This new Howard model," "Howard precision-built," "This Howard creation," and "A Howard clock should last a lifetime," and on its said clocks and in other ways, that said products were produced by the makers of the Howard watches and clocks long familiar to the public as the product of the original E. Howard Watch and Clock Co. and its successors; The facts being its business was organized in 1940, no person by the name of Howard had ever been associated with its corporate organization, it had never had any connection with either the original E. Howard Watch & Clock Co. or its successors in interest, and its said clocks were not made by or purchased from the makers of the well-known Howard watches and clocks;

With the result of causing many members of the purchasing public to believe that its said business was connected with and that its said clocks were made by or purchased from the makers of the well-known watches and clocks, and of causing them to purchase its products in substantial number in reliance upon the truth of the aforesaid representation and designations:

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

Before *Mr. Miles J. Furnas*, trial examiner.
Mr. S. F. Rose for the Commission.

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 Howard Clock Corporation, 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. The respondent, Howard Clock Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 1718-20 N. Damen Avenue, Chicago, Ill.

PAR. 2. The respondent is now, and has been for more than three years last past, engaged in the manufacture, sale and distribution of electric clocks. In the course and conduct of its business, respondent sells its said clocks to the wholesale and jobber trade for resale to the purchasing public. The respondent causes its said merchandise, when sold to be transported from its place of business in the State of Illinois to purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the year 1842 there was incorporated the E. Howard Watch & Clock Co., which began the manufacture and sale of watches and clocks under the name "Howard." Throughout the many years since its establishment the business has been conducted by its original founders and successors in title. During the intervening years the name "Howard" has been used in the trade or corporate name of the original founders or its successors. The name "Howard," developed and used by the original founders and by its successors to enable the purchasing public to identify the brand and quality of the watches and clocks sold by them, has been widely and favorably known to the purchasing public for high standards, workmanship and quality and by reason thereof its manufacturers have enjoyed a profitable business and the good will of a substantial part of the purchasing public.

PAR. 4. In the course and conduct of its business aforesaid, the respondent adopted the word "Howard" under which to carry on its business, which said name respondent at all times mentioned herein has used continuously, and now uses as a trade designation to identify its products, in soliciting the sale of and selling its clocks described herein. Typical of the manner and use of the word "Howard" in its advertising disseminated among purchasers and prospective purchasers are the following:

Clocks of Distinction

H O W A R D

Clocks of Quality

H O W A R D

Commercial Clocks

The famous HOWARD

The dependable Howard

This new Howard model

Howard precision-built

This Howard creation

The many qualities of the dependable Howard

A Howard clock should last a lifetime

Like all Howard clocks it comes with

Underwriters' Approved Cord.

PAR. 5. Through the use of the word "Howard" in its corporate name and in its advertising and on its clocks, and through other representations not specifically set out herein, the respondent has represented, and now represents, directly and by implication, that its said clocks are produced by the makers of "Howard" watches and clocks, long familiar to the public as the product of the original E. Howard Watch & Clock Company, and its successors.

PAR. 6. The use by respondent of the word "Howard" in its corporate name and as a mark or brand for its said products is confusing, misleading and deceptive and causes many members of the purchasing public to believe that respondent's said business is connected with, and that said clocks are manufactured by or purchased from, the makers of the famous Howard watches and clocks and causes them to purchase said clocks as a result of such mistaken belief. In truth and in fact respondent's business was organized in 1940 and no person by the name of Howard was or is associated with its corporate organization and it has not had, nor does it now have, any connection with either the original E. Howard Watch & Clock Company or its successors in interest, and its said clocks are not made by or purchased from the makers of the Howard watches and clocks, which products have been long and favorably known to the purchasing public.

The use of the word "Howard" in its corporate name and as a mark or brand on said clocks, and otherwise by respondent, has placed in the hands of dealers and jobbers a means and instrumentality whereby such dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 7. The use by respondent of said corporate name and the designations and representations, as set forth herein, in connection with the offering for sale and selling of their said clocks has had, and now has, the tendency and capacity to, and does mislead purchasers and prospective purchasers into the erroneous and mistaken belief that such representations and designations are true, and to induce the purchase in said commerce of said clocks on account thereof.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the 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 the 24th day of January, 1944, issued and thereafter served its complaint in this proceeding upon the respondent, Howard Clock Corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Subsequently, the respondent filed its answer in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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, Howard Clock Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 1718-20 N. Damen Avenue, Chicago, Ill.

PAR. 2. The respondent is now, and has been for more than three years last past, engaged in the manufacture, sale and distribution of electric clocks. In the course and conduct of its business, respondent sells its said clocks to the wholesale and jobber trade for resale to the purchasing public. The respondent causes its said merchandise, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located in the various States of the United States other than the State of Illinois and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the year 1842 there was incorporated the E. Howard Watch & Clock Co., which began the manufacture and sale of watches and clocks under the name "Howard." Throughout the many years since its establishment the business has been conducted by its original founders and successors in title. During the intervening years the name "Howard" has been used in the trade or corporate name of the original founders or its successors. The name "Howard," developed and used by the original founders of said E. Howard Watch & Clock Co., and by its successors to enable the purchasing public to identify as to brand and quality the watches and clocks sold by them, has been widely and favorably known to the purchasing public for the high standards of workmanship and the quality of the products sold under that name and by reason thereof manufacturers of said products have enjoyed a profitable business and the good will of a substantial part of the purchasing public.

PAR. 4. In the course and conduct of its business aforesaid, the respondent adopted the word "Howard" under which to carry on its business, which said name respondent, at all times mentioned herein, has used continuously, and now uses as a trade designation to identify its products, in soliciting the sale of and in selling its clocks described herein. Typical of the manner and use of the word "Howard" in its advertising matter disseminated among purchasers and prospective purchasers are the following:

Clocks of Distinction

H O W A R D

Clocks of Quality

H O W A R D

Commercial Clocks

The famous H O W A R D

The dependable H o w a r d

This new H o w a r d model

Howard precision-built

This H o w a r d creation

The many qualities of the dependable Howard

A Howard clock should last a lifetime

Like all Howard clocks it comes with Underwriters' Approved Cord.

PAR. 5. Through the use of the word "Howard" in its corporate name and in its advertising matter and on its clocks, and through other representations not set out herein, the respondent has represented, and now represents, directly and by implication, that its said clocks are produced by the makers of the "Howard" watches and clocks, long familiar to the public as the product of the original E. Howard Watch & Clock Co., and its successors.

PAR. 6. The use by respondent of the word "Howard" in its corporate name and as a mark or brand for its said products is confusing, misleading and deceptive and causes many members of the purchasing public to believe that respondent's said business is connected with, and that said clocks are manufactured by or purchased from, the makers of the well-known Howard watches and clocks, and causes them to purchase said clocks as a result of such mistaken belief.

In truth and in fact respondent's business was organized in 1940 and no person by the name of Howard was or is associated with its corporate organization and it has not had, nor does it now have, any connection with either the original E. Howard Watch & Clock Co., or its successors in interest, and its said clocks are not made by or purchased from the makers of the well-known Howard watches and clocks.

The use of the word "Howard" in its corporate name and as a mark or brand on said clocks, and otherwise by respondent, has placed in the hands of dealers and jobbers a means and instrumentality whereby such dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 7. The use by respondent of said corporate name and the designations and representations, set forth herein, in connection with the offering for sale and selling of their said clocks, has had, and now has, the tendency and capacity to, and does, mislead purchasers and prospective purchasers into the erroneous and mistaken belief that such representations and designations are true. As a result of said erroneous and mistaken belief a substantial number of members of the public have purchased respondent's clocks in commerce between and among the several States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the 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 and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act,

It is ordered, That respondent, Howard Clock Corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of clocks or watches in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Howard," or any simulation thereof, in its corporate or trade name.

2. Using the word "Howard," or any simulation thereof, in any way to designate, describe, or refer to clocks or watches not the product of E. Howard Watch & Clock Company or its successors.

3. Representing in any manner that clocks or watches not the product of E. Howard Watch & Clock Company or its successors are the product of said company or its successors.

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

IN THE MATTER OF
CHARLES F. ROHLEDER, ET AL.¹

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

Docket 4806. Complaint, Aug. 6, 1942—Decision, Oct. 10, 1944

Where (1) a general contractor and two individuals, his employees and agents; (2) D, employee and agent, in city concerned, of W (company engaged in interstate purchase and sale of electrical equipment and supplies) and instrumental in effecting the interstate purchase and sale of such products; (3) R, electrical contractor in said city, and also, during period concerned, employee and agent of aforesaid general contractor and purchaser in interstate commerce in said capacity of such products from concerns W, W.B., and others; (4) C, vice president and agent of said W. B. (corporation engaged in manufacture and in interstate purchase and sale of such products) and instrumental in effecting the purchase and sale of such products; (5) L, secretary and agent of A (a corporation also so engaged); and (6) the three electrical concerns above referred to, namely, W, W.B., and A, in competition among themselves and with other purchasers and sellers of such products except insofar as said competition had been restricted or forestalled by the concerted course of action below set forth;

Following arrangements by the Navy with a shipbuilding company under which said company was to undertake construction of naval vessels, and pursuant to which (1) the Navy agreed to arrange for the advancing of the necessary funds to rehabilitate the latter's shipyards in said city, to be expended under the general supervision of the Navy and subject to its approval, and (2) said shipbuilding company contracted with aforesaid general contractor for the reconstruction by him of certain office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that in securing materials or services he would obtain competitive offers from as many as practicable, but not less than two—or three where specified—reputable firms and award a contract to the concern quoting the minimum price; bids to be opened by or in the presence of the Navy Supervisor of Shipbuilding, or his representative, and to be subject to his approval before award of the subcontract—

Cooperated, combined, agreed, and conspired, through understanding among themselves, during a period of some fifteen months or more, to, and did restrain and suppress competition in the purchase and sale in commerce of said products, including such items as electric cable, wire, switches, conduit, fittings, condulets, potheads, cable heads, transformers, insulators, lighting fixtures, lamps, and accessories; and pursuant to and as a part of aforesaid understanding, etc.—

- (a) Promoted, established and carried out a practice of maintaining a false appearance of competition between said concerns and other sellers of such products in their submission of bids to buyers and prospective buyers;
- (b) Conveyed to such buyers, including official awarding authorities of the United States Government, and others involved in the purchase of such products, the rep-

¹ The instant case is one of a group of eight having to do with the preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids in connection with the Navy's arrangement for the construction of ships by the Cramp Shipbuilding Co. at its shipyards in Philadelphia. For list of these cases, see footnote to the case of the Grater-Bodey Co., et al., Docket 4799, p. 113.