

Complaint

IN THE MATTER OF

F & F LABORATORIES, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3727. Complaint, Feb. 28, 1939—Decision, June 14, 1939*

Where a corporation engaged in manufacture, sale, and distribution of its "F & F Cough Syrup" and "F & F Lozenges" to wholesale distributors and retail dealers in various other States and in the District of Columbia; in advertisements which it disseminated and caused to be disseminated through newspapers of general circulation among the various States and through radio continuities broadcast from stations of extrastate audience—

Represented, directly and indirectly, that said cough syrup, taken orally, and said lozenges, dissolved in the mouth, would ward off and stop and check coughs, colds, and sore and irritated conditions of the throat, and that each product was a competent and effective remedy for and would cure coughs, colds, and sore throats, through such statements, among others, as " * * * ingredients vaporize and spread to the nasal passages, the wind-pipe and the upper bronchial tubes, relieving congestion and irritation where liquids could never reach," " * * * see for yourself how this amazing liquid cough medicine acts to relieve coughs due to colds, even in cases where ordinary remedies don't get results," etc., " * * * works on a unique principle called Syn-Er-Gism," etc., and "Why not try the cough syrup that thousands are switching to," etc., facts being neither product was a cure or remedy for coughs, colds, and throat irritations, nor competent treatment therefor, and had no therapeutic value other than to give temporary palliative relief from throat irritations and simple colds;

With effect of misleading and deceiving portion of purchasing public into mistaken and erroneous belief that its said products possessed properties and effectiveness represented for them, and that they constituted effective remedy or cure for coughs, colds, and irritated conditions of the throat, and into purchase of quantities of said products, and of thereby diverting unfairly trade to it from competitors engaged in sale and distribution in commerce among the various States and in the District of Columbia of preparations for use in treatment of aforesaid ailments, diseases, and conditions for which it recommended its said products:

Held, That such practices, as above set forth, were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition and unfair and deceptive acts and practices.

Mr. Carrel F. Rhodes for the Commission.

Mayer, Altheimer & Kabaker, of Chicago, Ill., 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 F & F Laboratories,

Inc., hereinafter referred to as respondent, has violated the provisions of said act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, F & F Laboratories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nebraska with its offices and principal place of business located at 3501 West Forty-eighth Place, Chicago, Ill.

PAR. 2. Respondent, F & F Laboratories, Inc., has been for more than 1 year last past and is now engaged in the business of manufacturing or compounding, advertising, selling, and distributing preparations known and designated as F & F Lozenges and F & F Cough Syrup for the treatment of coughs, colds, and irritated or sore throat. Said respondent now causes and for more than 1 year last past has caused its said products to be sold to dealers and the purchasing public through various advertising means. Respondent has caused the same when sold to be transported from its principal place of business in Chicago, Ill., to purchasers thereof located at points in the various States of the United States other than the aforesaid State of Illinois and in the District of Columbia.

There is now, and has been for more than 1 year last past, a course of trade in said products, F & F Cough Lozenges and F & F Cough Syrup so sold and distributed by respondent in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business, respondent is now and has been in competition with other corporations and with partnerships, firms, and individuals likewise engaged in the sale and distribution of similar products and preparations intended for use for the same purposes for which respondent's said F & F Cough Lozenges and F & F Cough Syrup is offered for sale and sold in commerce among and between the various States of the United States and the District of Columbia.

Among said competitors are many who do not misrepresent the nature and character, quality, and effectiveness of their respective products and preparations.

PAR. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said products by United States mails, by insertion in newspapers and periodicals having a general circulation and also in circulars and other printed and written matter, all of which are disseminated in commerce between and among the various States of the

United States; and by continuities broadcast from radio stations which have sufficient power to and do convey the programs emanating therefrom to listeners located in various States of the United States other than the States in which said broadcasts originate, and by other means in commerce as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said products; and has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said products by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said products in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

F & F gets rid of coughs quick.

Protects children from coughs.

Knocks colds cold.

These cough lozenges were made to give you effective and fast relief.

Each F & F Lozenge gives you a fifteen minute medicated treatment. Better head off that cough before it gets started.

F & F Syrup and Lozenges give you a complete treatment.

I was always bothered by bronchial trouble and F & F certainly gave me relief.

Each Lozenge gives you a 15 minute medicated treatment that checks coughs and gives quick relief.

Take F & F Cough Lozenges the minute you feel a dryness of the throat. Head off a cough before it gets started. Each F & F Cough Lozenge gives you a 15 minute medicated treatment with real lasting relief.

Thousands have already switched to these really medicated lozenges and find that they are better than a gargle for relieving a raw throat.

Also, certain F & F ingredients vaporize and spread to the nasal passages, the windpipe and the upper bronchial tubes, relieving congestion and irritation where liquids could never reach.

And for a raw throat, a great many folks say that F & F is much more effective than a gargle. Now—here's the reason. Each F and F Lozenge gives the throat a 15-minute treatment because it is especially made to dissolve slowly. A gargle, on the other hand, lasts only a few seconds.

We want you to try F and F Cough Syrup to see for yourself how this amazing liquid cough medicine acts to relieve coughs due to colds, even in cases where ordinary remedies don't get results. You see, F and F acts on the principle of Syn-Er-Gism.

You see, F and F Cough Syrup works on a unique principle called Syn-Er-Gism. It means the cooperation of a number of ingredients, each one doing a different thing, when several different things must be done to bring prompt relief.

Other F and F ingredients moisten the throat, thus helping to loosen phlegm and break up the cough.

Complaint

29 F. T. C.

Why not try the cough syrup that thousands are switching to this winter for sure, safe, comforting and fast relief from coughs due to colds.

There's nothing like F and F Cough Syrup for bringing fast and safe relief for coughs due to colds.

Use F and F Cough Syrup at the first sign of an irritated throat and check a cough before it gets started—out of control.

F and F Cough Syrup is based on the Syn-Er-Gistic principle. This means that it consists of a number of highly effective ingredients carefully selected to work together, and thus bring quicker and better results than the same ingredients if taken individually.

Through the aforesaid statements and representations and others of similar import and meaning not herein set-out, all of which purport to be descriptive of respondent's said products and their effectiveness in use, the respondent imports and implies that said products, F & F Cough Lozenges, which are to be dissolved in the mouth, and F & F Cough Syrup, which is to be taken orally, will ward off, arrest, prevent, stop, relieve, and check coughs and colds and sore and irritated conditions of the throat and that each of said products is a competent and effective treatment for and will cure coughs, colds, and sore throats.

PAR. 4. The representations, implications, and advertisements so used and disseminated by the respondent in connection with the sale and distribution of said products in said commerce as aforesaid, are false, misleading, and deceptive. In truth and in fact neither of said products, when used as directed by the respondents, will ward off, arrest, prevent, stop, relieve, or check the ailment or condition commonly referred to as a cold, coughs, and sore and irritated throats. Neither of said products, when used alone or in connection with the other, is a competent and effective treatment for, nor will it cure, a cough, a cold, or a sore and irritated throat.

The use of said products in the treatment of colds, irritated throats, and similar ailments and conditions will not do more than afford, in some instances, slight temporary symptomatic relief, such as relieving coughs and minor throat irritations in the early stages of a cold. Such use will not permanently and effectively cure or relieve coughs and sore throats due to pulmonary, bronchial, laryngeal, tracheal, or pharyngeal disturbances which have a cough and sore throat as one of the symptoms thereof.

Respondent's claims as to the therapeutic value and efficacy of said preparations are grossly exaggerated, false, and deceptive and greatly exceed any claims as to the therapeutic value and efficacy of said preparations which might truthfully be made.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading representations, implications, and advertisements dis-

seminated as aforesaid with respect to said products has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false representations, implications, and advertisements are true and that respondent's products possess the properties claimed and represented and will accomplish the results indicated and cause a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said products.

As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective products and preparations as described in paragraph 2. In consequence thereof, injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia, to the injury of its competitors and to the injury of the public.

PAR. 6. The aforesaid acts and practices of the 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 the 28th day of February 1939, issued and served its complaint in this proceeding upon said respondent, F & F Laboratories, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On April 28, 1939, the respondent filed its answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondent and W. T. Kelley, chief counsel for the Federal Trade Commission subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer,

and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, F & F Laboratories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and maintains its offices and principal place of business at 3501 West Forty-eighth Place, Chicago, Ill.

PAR. 2. Respondent, F & F Laboratories, Inc., a corporation, has been for more than 1 year last past and is now engaged in the manufacture, sale, and distribution of cough syrup and lozenges, which preparations are known as F & F Cough Syrup and F & F Lozenges and are designated for the treatment of coughs, colds, and irritated or sore throat. Respondent has caused and now causes the said cough syrup and lozenges and like products, when sold, to be shipped and transported from its place of business in the city of Chicago in the State of Illinois to wholesale distributors and retail dealers located in various States of the United States other than the State of Illinois and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, the said respondent was at all times hereinafter referred to in competition with other corporations and with partnerships, firms, and individuals likewise engaged in the manufacture and sale of cough syrups, lozenges, and like products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its said business as hereinabove described, respondent, F & F Laboratories, Inc., has disseminated and has caused to be disseminated, advertisements concerning its products, in newspapers having a general circulation among and between the various States of the United States and by radio continuities broadcast from radio stations which have sufficient power to, and do, convey programs emanating therefrom to listeners located in various States of the United States other than the State in which said broadcasts originate, in which the following statements, claims and representations were made to induce the purchase of its said products:

F & F gets rid of coughs quick.
Protects children from coughs.
Knocks colds cold.

These cough lozenges were made to give you effective and fast relief.

F & F Syrup and Lozenges give you a complete treatment.

I was always bothered by bronchial trouble and F & F certainly gave me relief.

Each Lozenge gives you a 15 minute medicated treatment that checks coughs and gives quick relief.

Head off a cough before it gets started. Each F & F Cough Lozenge gives you a 15 minute medicated treatment with real lasting relief.

Thousands have already switched to these really medicated lozenges and find that they are better than a gargle for relieving a raw throat.

Also, certain F & F ingredients vaporize and spread to the nasal passages, the windpipe and the upper bronchial tubes, relieving congestion and irritation where liquids could never reach.

We want you to try F and F Cough Syrup to see for yourself how this amazing liquid cough medicine acts to relieve coughs due to colds, even in cases where ordinary remedies don't get results. You see, F and F acts on the principle of Syn-Er-Gism.

You see, F and F Cough Syrup works on a unique principle called Syn-Er-Gism. It means the cooperation of a number of ingredients, each one doing a different thing, when several different things must be done to bring prompt relief.

Other F and F ingredients moisten the throat, thus helping to loosen phlegm and break up the cough.

Why not try the cough syrup that thousands are switching to this winter for sure, safe, comforting and fast relief from coughs due to colds.

There's nothing like F and F Cough Syrup for bringing fast and safe relief for coughs due to colds.

Use F and F Cough Syrup at the first sign of an irritated throat and check a cough before it gets started—out of control.

F and F Cough syrup is based on the Syn-Er-Gistic principle. This means that it consists of a number of highly effective ingredients carefully selected to work together, and thus bring quicker and better results than the same ingredients if taken individually.

PAR. 5. Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's products and their effectiveness in use, respondent has represented and does now represent directly and indirectly that said products, F & F Cough Syrup, when taken orally, and F & F Lozenges, when dissolved in the mouth, will ward off, arrest, prevent, stop, and check coughs, colds, and sore and irritated conditions of the throat, and that each of said products is a competent and effective remedy for and will cure coughs, colds, and sore throats.

PAR. 6. The Commission further finds that the representations, implications, and advertisements so used and designated by the respondent in connection with the sale and distribution of said products in said commerce as aforesaid are false and misleading and constitute false advertising. In truth and in fact neither of said products is a cure or remedy for coughs, colds, and throat irritations nor a com-

Order

29 F. T. C.

petent treatment therefor and have no therapeutic value other than to give temporary palliative relief from the symptoms of throat irritations and simple colds.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading representations, implications, and advertisements with respect to said products disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a portion of the purchasing public into the mistaken and erroneous beliefs that respondent's said products possess the properties and effectiveness represented for them and that they are an effective remedy or cure for coughs, colds, and irritated conditions of the throat and that each of the said products is a competent and effective treatment for coughs, colds, and sore throats; and into the purchase of quantities of respondent's said products, F & F Cough Syrup and F & F Lozenges. As a consequence trade has been unfairly diverted to the respondent from its competitors who are 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 preparations for use in the treatment of the aforesaid ailments, diseases, and conditions for which respondent recommends its products.

CONCLUSION

The practices of the respondent, F & F Laboratories, Inc., as set forth in the foregoing findings as to the facts, 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, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

Order

It is ordered, That the respondent, F & F Laboratories, Inc., a 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 medicinal preparations designed for the treatment of coughs, colds, and irritated or sore throat in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing that respondent's preparations now designated as F & F Cough Syrup and F & F Lozenges, or any other preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under those names or any other names, are a cure or remedy for coughs, colds, or throat irritations, or constitute a competent treatment therefor.

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

J. H. TIGERMAN, DOING BUSINESS AS EVER-KEEN DRY
SHAVER COMPANY AND ROYCE DRY SHAVER
COMPANY

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

Docket 3757. Complaint, Apr. 12, 1939—Decision, June 14, 1939

Where an individual engaged in assembling, and in selling and distributing electric razors to dealers in various States and in the District of Columbia—

- (a) Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for distribution of said merchandise to ultimate consumers wholly by lot or chance, and under which he distributed to purchasing public certain literature and instructions, including push cards, order blanks, pamphlets illustrating his products, and circulars explaining his plan of selling the same and allotting premiums or prizes under such plan, by which person selecting from long list of feminine names that corresponding with name concealed under card's large master seal, was awarded electric dry shaver being thus disposed of, and amount, if any, paid for chance by customers was contingent upon particular number pushed by chance, in accordance with cards' explanatory legends, and solicitor or operator of card was likewise thus compensated, and customer-purchaser of said individual was compensated by difference between aggregate receipts from each card and cost to him of two shavers involved in operation thereof; and
- Supplied thereby to and placed in hands of others means of conducting lotteries in the sale of his merchandise, in accordance with aforesaid or similar sales plans involving game of chance or sale of a chance to procure an article of merchandise at a price much less than normal retail price thereof, or without cost, and under which articles of merchandise involved were distributed to purchasing public wholly by lot or chance, contrary to an established public policy of the Government of the United States, and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and refrain therefrom;
- With the result that many persons were attracted by said sales plan or method employed by said individual in sale and distribution of his merchandise and element of chance involved therein, and were thereby induced to buy and sell such merchandise in preference to that offered and sold by said competitors who do not use same or equivalent method, and with effect, because of said game of chance, of unfairly diverting substantial trade to said individual from his competitors aforesaid who do not use such or equivalent method; and
- (b) Represented, in advertising disseminated through periodicals of general circulation and through circulars and other printed matter, that his said products were equal in value to a \$15 electric dry shaver and would give