

IN THE MATTER OF
FORSON 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 3361. Complaint, Mar. 18, 1938—Decision, Apr. 10, 1940

Where a corporation engaged in sale and distribution of its "Nu-Myst" medicament and vaporizer therefor, to drug jobbers and dealers; in advertisements thereof through means of radio broadcasts over stations of extrastate audience and through advertisements in newspapers, periodicals, and trade journals of general circulation throughout the United States, and circulars distributed to customers, and through use of the mail, advertising folders, letters, and literature—

Represented that its said preparation was a cure or remedy for whooping cough, colds, hay fever, rose fever, and asthma, and a competent and effective treatment for such ailments and conditions which would relieve the same, and was more than a relief from local irritation which might be caused by ailments in question, and that said product would destroy bacteria and prevent growth thereof;

Facts being that it was not a cure or remedy or competent or effective treatment for said various ailments and conditions and would not give relief therefor beyond point above noted nor destroy or prevent growth of bacteria, specifically was not a cure for colds generally, causes of which so-called allergies are many-fold, and, lacking anything to control bronchial tube spasms, would not control asthma nor, lacking germicidal quality, relieve whooping cough, and its various representations aforesaid were misleading and untrue;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that all of its said representations were true, and with result, as a consequence of such belief, that a number of consuming public purchased substantial volume of its product in preference to that of those engaged in substantial competition with it in sale and distribution of similar products in commerce among the various States and in the District of Columbia and in sale and distribution of products intended and used for purposes for which it recommended its said product:

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

Before *Mr. Arthur F. Thomas* and *Mr. Randolph Preston*, trial examiners.

Mr. William L. Taggart for the Commission.

Mr. Philip Steinman and *Mr. Lawrence H. Sanders*, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the Forson Laboratories, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said 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, Forson Laboratories, Inc., is a corporation organized, and existing under the laws of the State of New York, with its principal office and place of business located at 353 Fifth Avenue, in the city of New York, State of New York. Respondent is now and has been for several years last past engaged in the business of distributing and selling in commerce as hereinafter set out a certain medical product designated as Nu-Myst.

PAR. 2. Said respondent being engaged in business as aforesaid, causes said medical product, when sold, to be transported from its office and principal place of business in the State of New York to purchasers thereof located at various points in States of the United States other than the State of New York and in the District of Columbia. There is now and has been at all times mentioned herein a course of trade in commerce in said product so distributed and sold by the respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, the respondent is now and has been in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling inhalants or similar medicinal products in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 4. In the course of the operation of said business and for the purpose of inducing individuals, firms, and corporations to purchase said medicinal product respondent has made use of radio broadcasts over stations of sufficient power to convey the programs emanating therefrom into the various States of the United States and has caused advertisements to be inserted in newspapers, periodicals and trade journals with a general circulation throughout the United States; has printed and circulated to customers and prospective customers throughout the several States, through the use of the United States

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mails and otherwise, advertising folders, letters, and literature. In all such advertisements and advertising literature, the respondent has made such statements as the following:

This direct, natural treatment strikes at the root of the trouble—the mucous membranes. Nu-Myst brings speedy relief to sufferers from colds, hay fever, rose fever, asthma and other nasal and bronchial infections.

Nu-Myst contains the proper remedies and essential oils to combat colds without absorbing drugs into the system. It contains no drugs that are contra-indicated during the menstrual period.

The "common cold" is one of the most common causes of dysmenorrhea (painful menses). It is possible for the infection to settle in the entire genital tract. The use of many of the drugs contained in some cough and cold medicines is contra-indicated during menstruation.

All of said statements, together with many similar statements, appearing in respondent's advertising literature and radio broadcasts purport to be descriptive of respondent's product and its effectiveness in treating and curing the "common cold" and other diseases and infections of the nasal passages and bronchial tubes. In all of its advertising, respondent represents through statements and representations hereinabove set out and other statements of similar import, nature and effect that its product, Nu-Myst, will prevent and cure, or is beneficial in the treatment of, many of the diseases, ailments, afflictions, and conditions which may be present in the nasal passages and bronchial tubes.

Among the diseases, ailments, afflictions, and conditions named by the respondent in said advertising literature and radio broadcasts as diseases, ailments, afflictions, and conditions which the use of the above-named product will prevent and cure, or will be beneficial in the treatment of, are the following: Colds, hay fever, rose fever, asthma, and whooping cough.

In its aforesaid advertisements, respondent also unfairly disparages various inhalants and other competitive products designed for use in treating colds and coughs distributed by its competitors through representing that the use of many of the drugs contained in many cough and cold medicines are contra-indicated during menstruation, but that its product, Nu-Myst, contains no drugs which are contra-indicated during the menstrual period.

PAR. 5. The representations made by respondent with respect to the nature and effectiveness of its product when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the use of respondent's product will not prevent and cure, nor is it substantially beneficial in the treatment of all or any of the said diseases, ailments, afflictions, and conditions hereinabove named. Respondent's product will not have any curative value in these con-

ditions, nor materially alter their course, nor will it substantially relieve the various manifestations of these conditions. The drugs generally contained in cough and cold medicines are not contraindicated during menstruation, and there is no justification for respondent's representation that its product should be used during menstruation in preference to other forms of medication.

Respondent's product consists of several essential oils in 87½ percent alcohol. It is essentially a mild contra-irritant mixture.

PAR. 6. There are among respondent's competitors many who manufacture, distribute, and sell various products designed, intended, and sold for the use of either treating or curing the various diseases, ailments, afflictions, and conditions of the nasal passages and bronchial tubes hereinabove named and who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used, and who do not unfairly disparage the products of competitors.

PAR. 7. Each and all of the false and misleading statements and misrepresentations made by the respondent in designating or describing its product and the effectiveness of its product in curing, treating, or relieving the diseases, ailments, afflictions, or conditions of the nasal passages and bronchial tubes hereinabove named and in unfairly disparaging similar products sold by competitors were, and are, calculated to and have a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said representations are true and that said products will, in truth, accomplish the results claimed without any detrimental effect on the menstrual function, while products of competitors will detrimentally affect menstruation. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondent as hereinabove detailed, a number of the purchasing public has purchased a substantial volume of the respondent's product with the result that trade has been unfairly diverted to the respondent from competitors referred to in paragraph 6 hereof. As a result thereof, injury has been done, 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.

PAR. 8. The above and foregoing acts, practices, and representations of the respondent have been, and are, to the prejudice of the public and respondent's competitors as aforesaid and constitute unfair methods of competition within the meaning of section 5 of the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 18, 1938, issued and thereafter served its complaint upon the respondent, Forson Laboratories, Inc., a corporation charging it with the use of unfair methods of competition in violation of the provisions of said act. The respondent entered its appearance and filed its answer to the complaint, and thereafter, beginning on June 29, 1938, testimony and other evidence in support of the allegations of said complaint were introduced by W. L. Taggart, attorney for the Commission, and in opposition to the allegations of the complaint by Lawrence H. Sanders, and Philip Steinman, attorneys for the respondent, before Arthur F. Thomas and Randolph Preston, trial examiners of the Commission; the 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 said complaint, the answer thereto, the testimony and other evidence, brief in support of said complaint, and oral argument, no brief having been filed on behalf of the respondent, 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. Respondent Forson Laboratories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, having its office and principal place of business located in New York City, and is engaged in the sale and distribution of a medicament known as "Nu-Myst," and a vaporizer for the same, to jobbers and dealers in the drug trade. Respondent causes, and has caused said product, when sold, to be transported from its principal place of business in New York City, to purchasers thereof, some located in the State of New York and others located in various States of the United States. Respondent maintains and during all the times mentioned herein, has maintained a constant current of trade in said product, sold by it in commerce between and among various States of the United States, and in the District of Columbia, and is in substantial competition with other firms, corporations, and individuals also engaged in the business of selling and distributing products similar to that of respondent, in commerce between and among various States of the United States and in the District of Columbia.

PAR. 2. "Nu-Myst" is a liquid composed of certain common ingredients generally prescribed by physicians for relieving conditions caused by those afflictions usually termed "colds." The carrying medium for the medicinal oils or drugs is the 87.5 percent alcohol content of the mixture, the formula of which is as follows:

	Percent
Menthol.....	3.2
Camphor.....	.6
Thymol.....	.2
Oil of pine.....	7.0
Eucalyptol.....	.5
Benzyl benzoate.....	.5
Aromatics.....	.5
Alcohol.....	87.5

The product is sold in a package consisting of a container in which are a bottle of the medicament and an aluminum vaporizer, and a circular of instructions. The vaporizer is a fluid-holding receptacle attached to a device in such a manner that the receptacle may be placed over an electric light bulb. The heat from the bulb vaporizes the liquid.

PAR. 3. In the course and conduct of its business and for the purpose of inducing individuals, firms, and corporations to purchase said medicinal products, respondent has made use of radio broadcasts over stations of sufficient power to convey the programs emanating therefrom into various States of the United States, and has caused advertisements to be inserted in newspapers, periodicals, and trade journals with a general circulation throughout the United States; has had printed and circulated to prospective customers throughout the United States, through the use of the United States mail, advertising folders, letters, and literature. In all such advertising matter the respondent has made such statements as the following:

This true, natural treatment strikes at the root of the trouble—the mucous membranes. "Nu-Myst" brings speedy relief to sufferers from colds, hay fever, rose fever, asthma, and other nasal and bronchial afflictions.

Inhibits the growth of bacteria on the mucous membranes.

The new, natural, pleasant relief for colds, coughs, hay fever, rose fever and many nasal and bronchial infections.

PAR. 4. By the use of the statements in the foregoing advertising respondent represents that its product is more than a relief from any local irritation that may be caused by the ailments therein mentioned, but is a competent and beneficial treatment for colds, rose fever, asthma, whooping cough, and other nasal or bronchial afflictions. Such representations are misleading and untrue. The diseases named, except colds, are grouped under the so-called "allergies" and

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the causes of "allergies" are manifold, running into a hundred or more, and since there are so many causes it is impossible for a formula such as "Nu-Myst" to bring relief from any one of these conditions. Colds may be due to bacterial invasion and there is nothing in the ingredients as disclosed by the formula, the vapor of which will destroy bacteria. While the ingredients of the mixture are commonly used for the relief of local irritations of the mucous membranes of the nose, and may be so used effectively, the mixture has no curative value. It will not cure asthma, which is a spasmodic contraction of the bronchial tubes, because there is nothing in this formula that will relieve these bronchial tube spasms; nor will it relieve whooping cough which is a germ disease, and nothing in this formula will have any effect upon the germ itself.

PAR. 5. Each and all of the false and misleading statements and representations made by the respondent in describing its product as hereinabove set out, were and are calculated to, and have had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a result of this erroneous belief a number of the consuming public have purchased a substantial volume of respondent's product in preference to that of its competitors described in paragraph 1 hereof, with the result that trade has been diverted unfairly to respondent from its said competitors, engaged in the business of selling and distributing in commerce among and between the various States of the United States, products intended and used for the purposes for which respondent recommends its said product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence taken before Arthur F. Thomas and Randolph Preston, examiners of the Commission therefore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, brief in support of the complaint (no brief having been filed on behalf of respondent), and oral

arguments by William L. Taggart, counsel for the Commission, and by Philip Steinman, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Forson Laboratories, Inc., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its medicinal preparation designated "Ny-Myst," or any other preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under that name or any other name or names, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That respondent's preparation is a cure or remedy for colds, whooping cough, hay fever, rose fever, or asthma.

2. That respondent's preparation is a competent or effective treatment for, or that it will relieve, colds, whooping cough, hay fever, rose fever, or asthma, beyond such temporary relief as may be afforded by the temporary allaying of local irritation.

3. That respondent's preparation will destroy bacteria or prevent the growth of bacteria.

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
MICHIGAN BEAN SHIPPERS ASSOCIATION 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 3937. Complaint, Oct. 27, 1939—Decision, Apr. 11, 1940

Where a trade organization and members thereof concerned with or engaged in the growing and handling of Michigan beans, as hereinafter set forth, namely—

I. A nonprofit corporation which (1) was organized to and did perform the function of promoting general and special interests of its members and those engaged in the growing and handling of Michigan beans throughout said State, (2) constituted an instrumentality for furthering and making effective purposes and objectives of the individual members and others, (3) was successor to trade association first organized some 40 years theretofore, and (4) elevator operator and jobber members of which, and of its predecessor, had performed essential function in providing ready cash market for farmers' beans and numerous other farm commodities and in developing additional market demand and outlets for the large amount of beans grown in State in question, in which were produced 80 percent of the white pea, or "navy," beans, comprising one-third of bulk of bean crop moving in interstate commerce, and had been instrumental in keeping local growers in contact with distant buyers and consumers widely located throughout the eastern half of the United States, and, together with their association, in securing and establishing maintenance of uniform grades of Michigan beans and securing adoption thereof in the country's market, leading, substantially through such and certain other activity, to universal recognition and acceptance of such product as of highest standard and quality, and to insuring maintenance thereof on the part of growers and the trade generally, and (5) elevator operator members of which, with property investments aggregating several million dollars, furnished employment to several thousand individuals in State in question in course of performing functions necessary to prepare farmers' crop for market; and

II. Nine member concerns engaged as jobbers, or as jobbers and elevator operators, as case might be, in business of buying and selling beans, barley, wheat, and other farm commodities, and which, for a number of years theretofore and during period concerned, in the course and conduct of their respective businesses, (1) bought beans and other farm commodities from producers and others in State in question for resale therein and in other States and Territories of the United States and in the District of Columbia, and in foreign nations, and, pursuant to sales thereof, shipped or caused to be shipped such commodities from various points in said State to purchasers at their respective locations within or without such State, as above indicated, and (2) bought and sold quantities of beans, barley, wheat, and other farm commodities in such State for shipment, in part, into the stream of commerce between and among the various States, etc., as above set forth, (3) individually and collectively purchased and sold, and shipped or caused to be shipped, from year to year, 80 percent of the annual crop of "navy" beans