

IN THE MATTER OF
BEEMAN'S LABORATORY, INC., AND E. A. RUSH, MRS.
J. F. RUSH, AND H. C. ALLEN, INDIVIDUALLY AND AS
OFFICERS THEREOF

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

Docket 4451. Complaint, Jan. 25, 1941—Decision, Mar. 13, 1941

Where a corporation and three individuals, who were its president, vice president and secretary, and director, determined, directed, and administered its business policies and sales activities, or participated in so doing, engaged in interstate sale and distribution of their so-called "BQR" or "BQR Remedy" medicinal preparation; in advertisements which they disseminated and caused to be disseminated in commerce and otherwise through the mails, newspapers, periodicals, radio continuities, and other advertising literature—

Represented, directly and by implication, that said "BQR" preparation possessed value in preventing colds and cold infection, constituted a cure and remedy or competent and effective treatment for colds, and would overcome cold discomforts and the misery of tough colds; facts being "BQR" was nothing more than a laxative with mild analgesic properties, had no curative effect on the underlying factors which cause colds, would not prevent colds, and had no therapeutic value in the treatment of colds in excess of furnishing temporary relief from some of the symptoms often associated therewith by reason of its analgesic properties and of furnishing a laxative action to the bowels, and would not accomplish other results claimed therefor as above set forth;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such false representations of its said product were true, and of inducing thereby its purchase thereof:

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.

Mr. John W. Carter, Jr.; 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 Beeman's Laboratory, Inc., a corporation; E. A. Rush, individually and as president of Beeman's Laboratory, Inc.; Mrs. J. F. Rush, individually and as vice president and secretary of Beeman's Laboratory, Inc.; and H.

C. Allen, individually and as director of Beeman's Laboratory, Inc., have 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, Beeman's Laboratory, Inc., is a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business located at 70 Central Avenue SW., Atlanta, Ga.

The respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, all of Atlanta, Ga., are the president, vice president and secretary, and director, respectively of the respondent, Beeman's Laboratory, Inc., with their office and principal place of business located at 70 Central Avenue SW., Atlanta, Ga.

PAR. 2. Respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, determine, direct, and administer, or participate in determining, directing, and administering the business policies and sales activities of the respondent, Beeman's Laboratory, Inc., as hereinafter set forth.

PAR. 3. Respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, acting as aforesaid, are now, and for more than 1 year last past have been, engaged in the sale and distribution of a medicinal preparation designated as "BQR," and as "BQR-Remedy" in commerce among and between the various States of the United States.

Respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, acting as aforesaid, cause said medicinal preparation when sold to be transported from respondents' place of business in the State of Georgia to purchasers thereof located in various other States of the United States.

Respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, acting as aforesaid, maintain and at all times mentioned herein have maintained, a course of trade in the said medicinal preparation in commerce between and among the various States of the United States.

PAR. 4. In the course and conduct of their aforesaid business, respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, acting as aforesaid, have disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their said preparation by United States mails and by various other means in commerce, as commerce is defined by the Federal Trade Commis-

Complaint

32 F. T. C.

sion Act; and respondents as aforesaid have also disseminated and are now disseminating and have caused and are now causing the dissemination of false advertisements concerning their said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said preparation in commerce, as commerce is defined by the Federal Trade Commission Act.

Among and typical of the false statements and representations contained in the aforesaid advertisements, disseminated and caused to be disseminated by the United States mails and by advertisements in newspapers and periodicals, by radio continuities, and by other advertising literature, are the following:

B. Q. R. Remedy Fights Colds.

During unseasonal weather periods keep B. Q. R. Cold Remedy on hand for use in preventing colds.

* * * The danger of cold infection is greater; hence it is wise to keep at hand reliable tested remedy which has been used successfully by thousands of people * * *.

Fight those cold discomforts with the fighting cold remedy—BQR—and remember it takes a fighting cold remedy to lick the misery of a tough cold.

Get BQR—the fighting cold remedy—for your nagging cold discomforts * * *.

Through the use of the statements and representations hereinabove set forth and in other statements and representations not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of the aforesaid preparation, the said respondents, as aforesaid, represent directly and by implication that their said preparation possesses value in preventing colds and cold infection; that it is a cure and a remedy for colds and will overcome cold discomforts and the misery of tough colds; and that it constitutes a competent and effective treatment for colds.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondents' preparation is nothing more than that of a laxative having mild analgesic properties. This preparation has no curative action on the underlying factors that cause colds, and it will not prevent colds or cold infection. It is not a cure or remedy for colds, and will not overcome cold discomfort or the misery of tough colds. It has no therapeutic value in the treatment of such condition in excess of furnishing temporary relief from some of the symptoms often associated with colds and of furnishing a laxative action of the bowels.

PAR. 6. The use by the said respondents, as aforesaid, of the foregoing false, deceptive, and misleading statements and representations, and others of a similar nature, disseminated as aforesaid, has had and

now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' preparation.

PAR. 7. The aforesaid acts and practices of the said respondents 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 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 25th day of January 1941, issued, and on the 27th day of January 1941, served, its complaint in this proceeding upon respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, individually, and as president, vice president and secretary, and director, respectively, of respondent, Beeman's Laboratory, Inc., charging said respondents with unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

On February 15, 1941, respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, jointly and severally in their individual capacities and as president, vice president and secretary, and director, respectively, of Beeman's Laboratory, Inc., filed their answer in which they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts and waived the filing of briefs and the presentation of oral argument.

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

PARAGRAPHS 1. Respondent, Beeman's Laboratory, Inc., is a corporation organized and existing under the laws of the State of Georgia with its principal office and place of business located at 70 Central Avenue SW., Atlanta, Ga.

Findings

32 F. T. C.

Respondents E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, are the president, vice president and secretary, and director, respectively, of respondent, Beeman's Laboratory, Inc., with their office and principal place of business located at 70 Central Avenue SW., Atlanta, Ga. These respondents determine, direct, and administer, or participate in determining, directing, and administering, the business policies and sales activities of respondent, Beeman's Laboratory, Inc.

PAR. 2. Respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, as aforesaid, are now and for more than 1 year last past have been engaged in the sale and distribution in commerce between and among the various States of the United States of a medicinal preparation designated "BQR" and "BQR Remedy."

The said respondents cause the said medicinal preparation, when sold, to be transported from their said place of business in Georgia to purchasers thereof located in various other States of the United States, and they maintain and at all times mentioned herein have maintained a course of trade in the said medicinal preparation, designated as aforesaid, in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business, respondent, Beeman's Laboratory, Inc., and respondents, E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, as aforesaid, have disseminated and are now disseminating, and have caused and are now causing, the dissemination of false advertisements, concerning their aforesaid medicinal preparation, by the United States mails, and by various other means in commerce as commerce is defined by the Federal Trade Commission Act; and respondents, as aforesaid, have also disseminated, and are now disseminating, and have caused and are now causing, the dissemination of false advertisements concerning the aforesaid medicinal preparation, designated as aforesaid, by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said medicinal preparation, 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 by the United States mails, by advertisements in newspapers, periodicals, radio continuities, and other advertising literature, are the following:

BQR Remedy Fights Colds.

During unseasonal weather * * * keep BQR Cold Remedy on hand for use in preventing colds.

* * * The danger of cold infection is greater; hence it is wise to keep at hand a reliable tested remedy which has been used successfully by thousands of people * * *.

Fight those cold discomforts with the fighting cold remedy—BQR—and remember it takes a fighting cold remedy to lick the misery of a tough cold.

Get BQR—the fighting cold remedy—for your nagging cold discomforts * * *.

PAR. 4. Through the use of the statements and representations hereinabove set forth and other similar statements and representations not specifically set out herein, all purporting to be descriptive of the therapeutic properties of the aforesaid medicinal preparation, respondents represent, directly and by implication, that said preparation "BQR" possesses value in preventing colds and cold infection; that it is a cure and remedy for colds and will overcome cold discomforts and the misery of tough colds; and that it constitutes a competent and effective treatment for colds.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. Respondents' preparation "BQR" is nothing more than a laxative having mild analgesic properties. It has no curative action on the underlying factors that cause colds and it will not prevent colds or cold infection. It is not a cure or remedy for colds, and will not overcome cold discomforts or the misery of tough colds. Said preparation has no therapeutic value in the treatment of colds in excess of furnishing temporary relief from some of the symptoms often associated with colds by reason of its analgesic properties and of furnishing a laxative action to the bowels.

PAR. 6. The use by the said respondents of the foregoing false, deceptive, and misleading statements and representations, and others of a similar nature, with respect to their aforesaid preparation "BQR," sometimes otherwise designated as "BQR Remedy," disseminated as aforesaid, 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 statements, representations, and advertisements are true, and to induce a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said preparation.

CONCLUSION

The aforesaid acts and practices of the said respondents, as aforesaid, 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 intent and meaning of the Federal Trade Commission Act.

Order

32 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the joint and separate answer of the respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Beeman's Laboratory, Inc., and its officers, and E. A. Rush, Mrs. J. F. Rush, and H. C. Allen, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their medicinal preparation "BQR," or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mail or (b) by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that respondents' medicinal preparation "BQR"—

- (a) Is a cure or remedy for colds.
- (b) Will prevent colds or cold infection.
- (c) Has any curative value on the underlying factors which cause colds.
- (d) Will overcome cold discomforts or the misery of tough colds.
- (e) Constitutes a competent and effective treatment for colds.
- (f) Has any therapeutic value in the treatment of colds in excess of that furnished by a laxative and a mild analgesic.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce as commerce is defined in the Federal Trade Commission Act, of said medicinal preparation "BQR," which advertisements contain any of the representations prohibited in paragraph 1 hereof.

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

Syllabus

IN THE MATTER OF

AMERICAN MAIZE-PRODUCTS COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY THE ROBINSON-PATMAN ACT, APPROVED JUNE 19, 1936

Docket 3805. Complaint, June 1, 1939—Decision, Mar. 15, 1941

Where a corporation engaged in manufacture of glucose or corn sirup unmixed, and in distribution and interstate sale thereof, mainly to candy manufacturer purchasers competitively engaged in sale to various customers, including chain stores, wholesalers, and retailers of candy, in the production of many kinds of which said sirup is one of major raw materials used, accounting for as much as 90 percent of weight of some varieties and for a substantial part of the total cost of manufacture—

- (a) Sold its said sirup at its old and lower prices to some purchasers, while concurrently selling such sirup of like grade and quality to other purchasers at its new and higher prices, which exceeded by from 5 to 55 cents per hundredweight the old and lower figures; and
- (b) Sold and delivered its said sirup of like grade and quality to purchasers in several types and sizes of containers at prices per hundredweight which increased over the tank-car price per hundredweight according to size and type of container, with differentials ranging from 33 cents for barrels to \$1.08 for 5-gallon kegs, and from 10 cents for tank wagons and 13 cents for returnable drums to 33 cents for such drums, depending on presence or absence of return freight thereon and amount thereof;

With result that, through selling its said sirup at said varying prices, not shown by it as made in good faith to meet the equally low price of a competitor, and differences between which it did not justify, it discriminated in price between such purchasers who paid said various differing prices, costs of unfavored purchasers were increased over those of favored purchasers directly as the amount of the discrimination between them and the sirup content of the candy increased, necessitating substantially lower profits for such unfavored purchasers than would be the case in the absence of said discrimination, whether through absorption by them of higher sirup costs in event of their continued sale of their product at prices competitive with those of the favored purchasers, or through necessarily diminished sales, idle plant capacity, and increased overhead in the event of increase in price of their product to cover such higher costs; and

With result that, by reason of diminished ability of unfavored candy manufacturers paying said higher prices to compete, due to loss of profits as above set forth in the sale of their products, with those manufacturers paying the lower prices for such sirup, effect of such discriminations might be substantially to lessen competition between favored and unfavored purchasers, tend to create a monopoly in former, and injure, destroy, and prevent competition therewith: