

IN THE MATTER OF
RELIANCE PHARMACAL COMPANY ET AL.

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

Docket 5712. Complaint, Nov. 30, 1949—Decision, May 21, 1953

The terms "arthritis" and "rheumatism" are general terms, sometimes used interchangeably, which may refer to any of many diseases or pathological conditions, including rheumatic fever, fibrositis, myositis, neuritis, sciatica, lumbago, and bursitis, all of which are characterized by one or more of such symptoms or manifestations as pain, stiffness, and inflammatory and destructive changes in the joints and tissues of the body.

The various pathological conditions generally referred to as "arthritis" and "rheumatism", which are of known as well as unknown origin, progress and develop differently. Likewise, they require different treatment, which will vary not only between different types of such ailments, but between different individuals suffering from the same ailment, and between different stages in the progress thereof. An adequate, effective, or reliable treatment for any kind of "arthritis" or "rheumatism" must, therefore, be predicated upon individual diagnosis, in order to determine whether the patient has arthritis or rheumatism, the particular kind of such ailment present, and whether it arose from a known or an unknown cause.

An adequate, effective, or reliable treatment for any of the various types of ailments included by the general terms "arthritis" and "rheumatism" may involve application of various therapeutic measures, including diet, rest or change of occupation, various types of physiotherapy such as orthopedic or thermal procedures, and medication; and delay of proper diagnosis, with consequent failure to administer appropriate treatment, may result in the evolution of irreversible pathological changes, causing a crippled, useless joint or extremity, especially in those forms of arthritis and rheumatism known to be caused by specific infections.

There is no drug, or combination of drugs, regardless of how administered, which will constitute an adequate, effective, or reliable treatment for the various forms of arthritis or rheumatism which can restore to normal the pathological changes which result from arthritic or rheumatic ailments.

Where a corporation and its three officers, engaged in the interstate sale and distribution of their "Artex" medicinal preparation; in advertising in newspapers and by radio, and through display cards and other display advertising disseminated to retail druggists, directly or by implication—

(a) Represented falsely that said product constituted an adequate, effective, and reliable treatment which would cure all forms of arthritis, rheumatism and kindred ailments, including neuritis, sciatica, bursitis, gout, and lumbago, and would arrest the progress and correct the underlying causes of arthritis, gout and lumbago;

1376

Complaint

- (b) Represented falsely that, taken as directed, it would prevent arthritis; and
- (c) Represented falsely that it constituted an adequate, effective, and reliable treatment for the symptoms of the aforesaid ailments and for migraine headaches and female period pains, including shooting pains, and also for the stiffness and crippling effects that accompany some of the aforesaid conditions;

The facts being that the aforesaid preparation, due to its salicylic or aspirin content as an analgesic and antipyretic, would do no more than afford temporary relief of minor aches, pains, and discomforts;

- (d) Falsely represented that said product alkalized when absorbed into the bloodstream and helped nature to remove the uric acid;
- (e) Falsely represented that calcium succinate, one of the ingredients of the product, stimulates cellular respiration, protects tissues and eliminates toxicity of acetylsalicylic acid, another ingredient;

The facts being that, taken orally, calcium succinate is converted by the liver to sugar, no significant amount of said substance as such reaches the bloodstream, and as an ingredient of said product it was therapeutically inoperative;

- (f) Falsely represented that the ingredient para aminobenzoic acid was effective as a tissue builder and helped nature repair damaged joints;
- (g) Falsely represented that the ingredient thiamin chloride promotes a sense of well being;
- (h) Falsely represented that salicylic acid, one of the ingredients of the product, suppresses rheumatic activity and prevents the onset of arthritis;

With capacity and tendency to mislead and deceive, and with effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and into the purchase of substantial quantities of said drug preparation as a result:

Held, That such false and misleading representations constituted false advertisements within the intent and meaning of the Federal Trade Commission Act, and that the aforesaid acts and practices were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Frank Hier* and *Mr. Abner E. Lipscomb*, hearing examiners.

Mr. Joseph Callaway for the Commission.

Adams, Duque, Davis & Hazeltine, of Los Angeles, Calif., and *Mr. Andrew J. Eymann*, of San Francisco, Calif., for respondents.

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 Reliance Pharmacal Company, a corporation, and Edward S. Morris, William Berrian,

Complaint

49 F. T. C.

and Florence T. Morris, individually and as officers of Reliance Pharmacal Company, hereinafter referred to as respondents, 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. Reliance Pharmacal Company is a corporation organized under the laws of the State of California and having its office and principal place of business in Nevada City, California.

Respondents Edward S. Morris, William Berrian and Florence T. Morris are now and at all times mentioned herein, have been Directors of respondent Reliance Pharmacal Company and respectively the President, Vice President and Secretary-Treasurer thereof; all of said individual respondents have offices and principal places of business in Nevada City, California. The said individual respondents are now and at all times mentioned herein, have been in control of the management, policies and operation of Reliance Pharmacal Company, particularly, in respect to the acts, practices and methods herein alleged.

PAR. 2. Respondents are now and have been for approximately one year engaged in the business of selling and distributing a certain drug product as "drug" is defined in the Federal Trade Commission Act.

The designation used by respondents for said product, and the formula, and directions, for the use thereof are as follows:

Designation: Artex

Formula:

Calcium Succinate.....	2.8 gr.
Acetylsalicylic Acid.....	3.7 gr.
Para Aminobenzoic Acid.....	10 gr.
Thiamin Chloride.....	1 mg.
Plus excipients	

Directions for use on the Artex bottle label are as follows:

Dosage: 6 to 12 tablets daily, or as directed by your physician. Read direction sheet in carton for more detailed directions. NOTE: Consult your physician when pains occur in children or adolescents, or if pains suffered by children or adolescents are accompanied by fever.

Dosage: 6 to 12 tablets daily or as directed by your physician. 12 tablets daily supply 12 times the established minimum daily requirements of Thiamin Chloride (Vitamin B₁) for individuals 12 years of age and over. The minimum daily requirement for Para Aminobenzoic Acid in human nutrition has not been established.

More detailed directions, which are referred to on the bottle label are furnished in the "Direction Sheet" enclosed within the carton and are as follows:

The greatest good can be anticipated when directions for the use of ARTEX TABLETS are followed carefully.

The Reliance Pharmacal Company suggests a maximum intake of TWELVE ARTEX TABLETS daily . . . three tablets with water before each meal, and three at bedtime, until severe pain is relieved. Then, reduce intake to EIGHT ARTEX TABLETS . . . that is . . . two tablets with water before each meal and two at bedtime . . . daily for ten weeks, or until all discomfort is gone. Then, reduce the dosage to FOUR ARTEX TABLETS . . . one before each meal and one at bedtime for a period of at least eight weeks.

DO NOT BE LULLED INTO CARELESS DISREGARD OF YOUR CONTINUED NEED FOR ARTEX TABLETS AFTER RELIEF FROM PAIN HAS BEEN OBTAINED. Truly effective results depend upon your continuance of the prescribed ARTEX routine for a few months longer, for although the actual pain may be gone, rheumatic activity continues in the body for a much longer period.

The time each day you take your ARTEX TABLETS is not nearly so important as TAKING them regularly. Space the dosage by meals and bedtime, but don't SKIP a single dosage and expect the same good results!

ARTEX TABLETS are a result of long years of scientific research, in process of which it has been established that the ingredients that comprise ARTEX not only offer effective relief of symptoms, but are also of material assistance in preventing an early repetition. Therefore, when relief of pain results from your faithful ARTEX TABLETS routine, it is earnestly advised that you CONTINUE TO TAKE ARTEX TABLETS for several months, to insure more lasting results.

IMPORTANT! Consult your physician when pains occur in children or adolescents, or if pains in children or adolescents are accompanied by a fever. * * *

Respondents cause the said product when sold to be transported from their place of business in the State of California to purchasers thereof located in other States of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in the said product in commerce between and among the various States of the United States. Respondents' volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of their business, respondents subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning Artex by the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act for the purpose of inducing and which were likely to induce directly or indirectly its purchase. These advertisements include but are not limited to the following:

ADVERTISEMENTS IN THE FOLLOWING NEWSPAPERS ON APPROXIMATELY THE FOLLOWING DATES:

The San Francisco Call-Bulletin, San Francisco, California, January 25, 27, and 31, 1949, February 3, 7, 10, 14, 17, 23, 25, and 28, 1949, March 3 and 11, 1949.

The Grass Valley Union, Grass Valley, California, January 27, 1949.

Chico Enterprise, Chico, California, January 29, 1949, February 14, 23 and 28, 1949, March 3, 10, 11, 17, 24 and 31, 1949.

Grit, Williamsport, Pennsylvania, February 6 and 20, 1949.

Modesto Bee, Modesto, California, February 14, 23, and 28, 1949, March 3, 10, 17, 24 and 31, 1949, and April 6, 1949.

Fresno Bee, Fresno, California, February 14, 23, and 28, 1949, March 3, 10, 17, 24, and 31, 1949, and April 7, 1949.

Santa Cruz Sentinel News, Santa Cruz, California, February 14, 23, and 28, 1949, March 3, 10, 17, 24, and 31, 1949.

San Mateo Times, San Mateo, California, February 14, 1949.

Marysville Appeal-Democrat, Marysville, California, March 14, 1949.

Long Beach Press-Telegram, Long Beach, California, March 24, 1949.

Radio continuities, three announcements per day, Monday through Friday for a specified number of times, usually 120 times, beginning on the following dates broadcast over the following radio stations:

February 3, 1949

KVCV—Redding, California
 KVOE—Santa Ana, California
 KVEC—San Luis Obispo, California
 KYOS—Merced, California
 KCRA—Sacramento, California
 KTRB—Modesto, California
 KMYC—Marysville, California
 KLAC—Los Angeles, California

February 7, 1949

KUSN—San Diego, California
 KWKW—Pasadena, California
 KCSB—San Bernardino, California
 KGDM—Stockton, California
 KFRE—Fresno, California
 KERO—Bakersfield, California
 KTMS—Santa Barbara, California
 KCOY—Santa Maria, California

1376

Complaint

February 9, 1949

XEGM—Tia Juana, Mexico

XECL—Mexicali, Mexico

February 20, 1949

KHSL—Chico, California

April 1, 1949

KLOK—San Jose, California

Respondents have disseminated and caused the dissemination of the advertisements referred to above for the purpose of inducing and the said advertisements were likely to induce, directly or indirectly, the purchase of Artex in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Through the use of the said advertisements respondents have made, directly and by implication the representations shown in the following subparagraphs identified as (a) to (i) inclusive. The said advertisements by reason of said representations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act by reason of the true facts which are set forth in subparagraphs (1) to (10) inclusive.

(a) That Artex is an adequate, effective and reliable treatment for all forms of arthritis, rheumatism and kindred ailments including neuritis, sciatica, bursitis, gout, and lumbago.

(1) Artex, however taken is not an adequate, effective or reliable treatment for any kind of arthritis, rheumatism or any kindred ailments including neuritis, sciatica, bursitis, gout and lumbago.

(b) That Artex will arrest the progress of, will correct the underlying causes of and will cure all forms of rheumatism and arthritis.

(2) Artex, however taken, will not arrest the progress of, will not correct the underlying causes of, or cure any form of rheumatism or arthritis.

(c) That Artex, taken as directed will prevent arthritis.

(3) Artex, however taken will not prevent arthritis in any form.

(d) That Artex is an adequate, effective and reliable treatment for the symptoms of arthritis, rheumatism, neuritis, sciatica, gout, lumbago, migraine headaches and female period pains including shooting pains, and also the stiffness and crippling effects that accompany some of these conditions.

(4) Artex, however taken, is not an adequate or reliable treatment for the symptoms of arthritis, rheumatism, sciatica, gout, lumbago, migraine headaches or female period pains, or the stiffness or crippling

effects that accompany these conditions. The pains may be of such a nature that they will be in no way alleviated by the use of Artex, however taken, and in other cases the relief will be limited to such temporary and partial relief of minor aches and pains as its aspirin content may afford in the individual case.

(5) There is one type of neuritis, caused by vitamin B₁ deficiency, which is uncommon, and for the treatment of which, including the symptoms, Artex, because of its Thiamin content, may be of value. This type of neuritis is not a kindred ailment to any form of arthritis or rheumatism.

(e) That Artex alkalizes when absorbed into the blood stream and helps nature to remove the uric acid.

(6) Artex does not alkalize when absorbed into the blood stream nor does it help nature to remove the uric acid.

(f) That calcium succinate, one of the ingredients of Artex, stimulates cellular respiration, protects tissues and eliminates toxicity of acetylsalicylic acid, another ingredient of Artex.

(7) Calcium succinate as an ingredient of Artex or however taken does not stimulate cellular respiration, protect the tissues of the body or have any effect on the toxicity of acetylsalicylic acid, the common name for which is aspirin. If Artex is taken in sufficient quantities for the aspirin content to have a toxic effect, such effect will obtain regardless of the presence of calcium succinate. However, the amount of aspirin in Artex when that preparation is taken as directed, is not ordinarily toxic.

(g) That para aminobenzoic acid, one of the ingredients in Artex is effective as a tissue builder and helps nature repair damaged joints.

(8) Para aminobenzoic acid as an ingredient of Artex or however taken does not build tissues or help nature repair damaged joints.

(h) That thiamin chloride, one of the ingredients of Artex, promotes a sense of well being.

(9) Thiamin chloride as an ingredient of Artex or however taken does not promote a sense of well being.

(i) That acetylsalicylic acid, one of the ingredients of Artex suppresses rheumatic activity and prevents the onset of arthritis.

(10) Acetylsalicylic acid as an ingredient of Artex or however taken does not suppress rheumatic activity or prevent the onset of arthritis.

PAR. 5. The use by the respondents of the said false advertisements with respect to Artex has had the capacity and tendency to mislead and deceive and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that the representations and statements contained therein were true and into

