

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION and)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 15-9304
)	
)	
TOMMIE COPPER, INC. and)	
THOMAS KALLISH,)	
Defendants.)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, Federal Trade Commission (“FTC” or “Commission”), for its complaint alleges:

1. The FTC brings this action pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain a permanent injunction, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in connection with the labeling, advertising, marketing, distribution, and sale of Tommie Copper copper-infused compression garments.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C 1331, 1337(a), and 1345, and 15 U.S.C. 45(a) and 15 U.S.C. 45(a) and 53(b).

3. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(1) , (c)(2), and (d) and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

DEFENDANTS

6. Defendant Tommie Copper, Inc., which also did business as Tommie Copper Inc. through July 2014 (“Tommie Copper”), is a Delaware corporation with its principal place of business at 74 South Moger Avenue, Mt. Kisco, NY. At times material to this Complaint, acting alone or in concert with others, Tommie Copper has advertised, marketed, or sold copper-infused compression garments to consumers throughout the United States.

7. Defendant Thomas Kallish (“Kallish”) is the founder and chairman of Tommie Copper. His principal office or place of business is the same as that of Tommie Copper. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had authority to control, or participated in the acts and practices of Tommie Copper, including the acts and practices set forth in the Complaint. Defendant Kallish resides in this district and in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

COMMERCE

8. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

9. Defendants advertise, offer for sale, sell, and distribute copper-infused compression garments such as elbow sleeves, knee sleeves, ankle sleeves, wrist sleeves, calf sleeves, shirts, tights, and socks, including but not limited to, the Compression Fit, Performance Compression, and Recovery product lines (collectively “Tommie Copper Compression Garments”). Tommie Copper Compression Garments are “devices” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

10. Defendants have advertised Tommie Copper Compression Garments through infomercials, brochures, social media, and in print media such as *Arthritis Today* magazine. Tommie Copper Compression Garments also are marketed and sold through websites owned by Tommie Copper, including, but not limited to, www.tommiecopper.com.

11. To induce consumers to purchase Tommie Copper Compression Garments, Defendants have disseminated or caused to be disseminated advertisements, packaging, and promotional materials, including, but not limited to, the attached Exhibits A through G-2. Defendants sell Tommie Copper Compression Garments for \$29.50 (compression sleeves) to \$69.50 (compression shirts). From April 2011 to October 2014, Defendants generated approximately \$87 million in U.S. gross sales of Tommie Copper Compression Garments.

12. The advertising, packaging, and promotional materials referenced in Paragraphs 10 and 11 contain the following statements and depictions:

A. *Tommie Copper: The Element of Comfort 2012 Catalogue*, which was disseminated from June through October 2012 (**Exhibit A**):



THE ELEMENT OF COMFORT

* * *

Tommie Copper doesn't just give you your bounce back...
It doesn't give you a little motion back. This can give your life back...
Period.

-Montel Williams

* * *

Copper has been used for thousands of years to aid in reducing inflammation, growing and sustaining connective tissues[,] and aiding in blood flow and oxygen transport.

* * *

By placing the copper at the source of the discomfort, it provides immediate relief from inflammation, starts to stimulate blood flow and harnesses the other well-known health benefits of copper.

B. Tommie Copper TV spot, "Athletes and Moms," which aired in October 2012 (**Exhibits B-1** (transcript) at 4-5 and **B-2** (video) at 00:00:04-28, 00:01:18, and 00:01:28):

ED GARRETT: I had grade four bone-on-bone arthritis in both knees. It was pretty unbearable . . . I've bought braces, muscle rubs, anti-inflammatories [that] didn't give me any relief. . . .

* * *

MONTEL WILLIAMS: Tommie Copper compression wear is made with an exclusive patented copper-infused fabric. Copper is well known for its anti-inflammatory properties[,] and inflammation is one of the major causes of pain.

ED GARRETT: I wear [Tommie Copper Compression Garments] every day. I haven't taken an anti-inflammatory in two months. I can't believe the relief I have.

C. Tommie Copper Infomercial, "Tommie Copper Show 1 - Living Well with Montel," which aired from August 2012 through July 2013 (**Exhibits C-1** (transcript) at 14, 15, and 23 and **C-2** (video) at 00:09:11, 00:10:07, and 00:18:19):

MONTEL WILLIAMS: ...Since my diagnosis with MS [multiple sclerosis], I have been on a quest to relieve my pain. Tommie Copper compression wear works for me. I wear a Tommie Copper compression shirt and no longer experience the usual aches and pains and the stiffness

* * *

MONTEL WILLIAMS: ...The benefits of copper have been extolled for centuries, and athletes have used compression for decades to enhance performance. Now, Tommie Copper fuses these two technologies into the most comfortable copper compression wear ever developed.

MALE ANNOUNCER: Experience Tommie Copper's revolutionary therapeutic copper compression. It works by combining a patented 56 percent copper-infused nylon yarn with Tommie Copper's exclusive multi-directional compression technology....

D. *Tommie Copper: The Element of Comfort* Brochure, which was disseminated from October 2011 through December 2012 (**Exhibit D**):

Tommie Copper is the leader in innovative copper compression wear designed to be comfortably worn all day and all night by athletes and non-athletes alike who are looking to find relief from everyday aches and pains, chronic pain, or relief from sports injuries.

Featuring:

TCC[™] Tommie
Copper
Compression

Tommie Copper's therapeutic copper compression (TCC) works by combining patented copper-infused yarn with proprietary multi-directional compression technology.

The gentle compression promotes recovery, performance, blood flow and harnesses the well known health benefits of copper for unmatched relief.

* * *

Don't Just Take Our Word For It:

Love this product. I have been having issues due to RA [Rheumatoid Arthritis] with swelling and pain in my left knee Since wearing the [Tommie Copper] knee sleeve, it has kept my knee from swelling, decreasing my knee pain at the end of the day Thanks for creating a great product!

– Maria M.

* * *

I love the [Tommie Copper] elbow compression sleeve . . . I have had fibromyalgia for almost 30 years now and have tried everything to help my pain. This product really works. It works so well [that] I ordered another one for my left elbow. Thanks, Tommie!

– Deefibro1

. . . I had been diagnosed with psoriatic arthritis about a year ago and one of the side effects is significant joint pain in the knee. I recently tried a Tommie Copper knee sleeve. I noticed that in the first twelve hours my pain went from an 8 to a 4. The nice things about the Tommie Copper product is you just put it on and forget about it.

– Mike H.

E. Tommie Copper Infomercial, "Tommie Copper Show 2," which aired from December 2012 through April 2013 (**Exhibits E-1** (transcript) at 4, 6, 7, and 38 and **E-2** (video) at 00:00:03, 00:00:21-23, 00:02:02, 00:02:54, and 00:30:04):

MALE ANNOUNCER: More than 75 million Americans live with pain caused by arthritis, injury and aging....

* * *

MALE ANNOUNCER: Pain sufferers spend nearly \$100 billion every year.

UNIDENTIFIED MALE: Advils, Aleves, Ben-Gay.

* * *

MONTEL WILLIAMS: ...Hi, I'm Montel Williams and today we're talking about a revolutionary breakthrough in the war against pain. We're talking about Tommie Copper. Since my diagnosis over 13 years ago with MS, I have been on a constant mission to manage my pain. I've tried more prescription medication than you can imagine. I dulled my pain, but it's also dulled my life. Now, Tommie Copper is truly pain relief without a pill.

* * *

MALE ANNOUNCER: Scott Davidson was just 19 when the unthinkable happened.

SCOTT DAVIDSON: An 18-wheeler ran the light and baseball batted my car. I was in a coma for a week.

MALE ANNOUNCER: Over 20 years later, complications from his injuries caused pain that made life and running a business unbearable.

SCOTT DAVIDSON: The pain was so bad, I just couldn't deal with it. You know, every day I was tired and exhausted and I was literally just about to have an operation.

MALE ANNOUNCER: Then he discovered Tommie Copper.

SCOTT DAVIDSON: And the day I put the Tommie Copper shirt on, there was no more pain. It's like the pain was gone.

* * *

UNIDENTIFIED FEMALE: The secret is Tommie Copper's unique therapeutic copper compression that works with a patented 56 percent copper infused yarn and an exclusive multi-directional technology....

F. Tommie Copper *Arthritis Today* Print ad, which was disseminated from September 2011 through December 2011 (**Exhibit F**):

Pain relief shouldn't be a hard pill to swallow.
Tommie Copper Compression Wear: the leader in
comfortable 24 hour pain relief.
featuring Therapeutic Copper Compression (TCC)

G. Tommie Copper YouTube Video, "Industrial Athlete Louis Raffio Gets His Life Back," which aired from December 2012 through October 2014 (**Exhibits G-1** (transcript) at 4-5 and **G-2** (video) at 00:33, 01:13):

LOUIS RAFFIO: ...I had a torn cartilage in my knee years ago. ...I was scheduled for surgery September 11, 2012 to have another knee replacement on my right knee. I had gone to the gym and I limped in one day, my right knee was bothering me. So, one of the guys saw me in the gym and said, what's the matter with you? I said, wow, my right knee is bothering me, I've probably got another bad knee.... [H]e threw me a Tommie Copper sleeve. I put it on, great. Next day I saw him, I said, ...you got to get me another one for my replaced knee because it feels that good. I put them on and I have not taken them off since. I have not done surgery [*sic*] and I am not going anywhere near the surgeon's knife. I am fine just the way it is.

VIOLATIONS OF THE FTC ACT

13. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."
14. Misrepresentations or deceptive omissions of material facts constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.
15. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce,

the purchase of food, drugs, devices, services, or cosmetics. The Tommie Copper Compression Garments are “devices” as “devices” are defined in Section 15(b) of the FTC Act, 15 U.S.C. § 55(b).

COUNT ONE

False or Unsubstantiated Efficacy Claims

16. Through the means described in Paragraph 12, including, but not limited to, the statements and depictions contained in the advertisements attached as Exhibits A through G-2, Defendants have represented, expressly or by implication, that:

A. The copper in Tommie Copper Compression Garments provides pain relief for consumers who wear the garments;

B. Tommie Copper Compression Garments treat or relieve chronic or severe pain, or pain and inflammation caused by diseases, including multiple sclerosis, arthritis, and fibromyalgia; and

C. Tommie Copper Compression Garments provide pain relief comparable or superior to drugs or surgery.

17. The representations set forth in Paragraph 16 are false or were not substantiated at the time the representations were made.

18. Therefore, the making of the representations as set forth in Paragraph 16 of this Complaint constitutes deceptive acts or practices and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

CONSUMER INJURY

19. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

20. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

- A. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;
- B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants; and
- C. Award Plaintiffs the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: November 25, 2015

Respectfully submitted,

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