

IN THE MATTER OF
J. E. TODD, INC.

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

Docket 4549. Complaint, July 29, 1941—Decision, Oct. 12, 1943¹

Where a corporation engaged in interstate sale and distribution of its "Todd's Capsules," ingredients of which, according to labels on the containers, were represented as including magnesium oxide, olibanum, sodium bicarbonate, and calcium bicarbonate; by statements in newspapers, periodicals, and reprints of testimonial letters, folders, and other advertising material, directly and by implication—

Represented falsely that its said preparation had curative properties in the treatment of rheumatism, arthritis, neuritis, and similar diseases, and would relieve the symptoms of pain associated therewith; the facts being that the therapeutic value of said preparation, if used in adequate amounts, was limited to neutralizing the acids of the stomach contents and the action of a mild laxative;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, because of which mistaken belief it purchased substantial quantities of its said preparation:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce.

As respects the only testimony offered by the seller of a preparation, which it recommended and advertised as an effective therapeutic agent and analgesic in the treatment of rheumatism, arthritis, and neuritis and similar diseases, ingredients of which, labeled as including magnesium oxide, olibanum, sodium bicarbonate, and calcium bicarbonate, as found by the Commission on the basis of the testimony of well-qualified physicians, had no therapeutic or analgesic value in the treatment of said ailments: such testimony, which indicated a limited knowledge of pharmacology, came from two osteopathic physicians who testified without knowledge as to the causative factors of arthritis and on the theory, long disproved by modern medicine and not now accepted by the consensus of opinion of the medical profession, that they are due to toxic conditions of the gastro-intestinal tract, and who mistakenly attributed the preparation's alleged therapeutic value to the element olibanum.

Before *Mr. John W. Addison*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Nash & Donnelly, of Washington, D. C., for respondent.

¹Original findings not published. The original order, which was not modified and is published herewith, was made as of July 27.

Complaint

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 J. E. Todd, Inc., a corporation, 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, J. E. Todd, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 3167 Delaware Avenue, Kenmore, N. Y.

PAR. 2. Respondent is now and for several years last past has been engaged in the offering for sale, sale and distribution, in commerce between and among the various States of the United States and in the District of Columbia, of a medical preparation designated as "Todd's Capsules" containing a compound of the following drugs: Olibanum, Magnesium Oxide, Calcium Carbonate, and Sodium Bicarbonate.

Respondent causes said preparation, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce 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 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 preparation by the United States mails and by various 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 said preparation; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements dis-

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seminated and caused to be disseminated by respondent, as aforesaid, are the following:

FREE
INFORMATION TO ALL SUFFERERS FROM
ARTHRITIS and RHEUMATISM

These painful diseases can be relieved.

Our Old English prescription has been kept a secret for more than 30 years. It has proven its merit in many difficult cases. Why suffer?

The capsules are designed and used for the purpose of alleviating the pain occurring in such maladies as rheumatism, arthritis, neuritis, and the like. No immediate relief is given by their use. Favorable results are not expected until they have been used for 100 days, and in stubborn and exaggerated cases longer use is necessary.

We will be very pleased to furnish you with names of people who have taken our capsules, so that you can write them and learn what wonderful results they have obtained.

For many years, while in another business, Mr. Todd was continually meeting people afflicted with the aforementioned diseases; and knowing what these capsules had done for his friends in England, he engaged a pharmacist to make some up for him. He was able in this way to help hundreds of people who had heretofore been unable to get any relief.

* * * for the efficacy of Todd's Capsules for arthritis.

* * * manifested in a curative medicine * * *

* * * what the capsules do for arthritis sufferers may be termed a modern miracle.

Todd's Capsules are being used by all age groups from three years to ninety-six years with amazing results in the treatment of rheumatism and arthritis.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent has represented and does now represent, directly and by implication, that its medicinal preparation designated as "Todd's Capsules" is an effective treatment for rheumatism, arthritis, neuritis, and kindred diseases or maladies, including the symptoms thereof and that it possesses curative properties in the treatment thereof.

PAR. 5. The foregoing representations and advertisements are grossly exaggerated, false and misleading. In truth and in fact said preparation is not an effective treatment for rheumatism, arthritis, and neuritis, and kindred diseases or maladies or the symptoms thereof and it does not possess curative properties in the treatment thereof.

PAR. 6. The use by respondent of the foregoing false, deceptive, misleading and exaggerated statements and representations with respect to respondent's preparation, and the manufacturing or compounding of same, 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 said statements and representations are true, and into the purchase of substantial quantities of respondent's said preparation because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices 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, MODIFIED FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 29, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, J. E. Todd, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, supplemental report of the trial examiner, and briefs and supplemental briefs filed in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission, having duly considered the matter, on July 27, 1943, issued and subsequently served upon said respondent its findings as to the facts and conclusion based thereon and its order requiring the respondent to cease and desist from the practices charged in the complaint. Subsequent thereto, this cause again came on for hearing before the Commission upon the petition of counsel for the respondent to reconsider and set aside the findings as to the facts and the order to cease and desist heretofore issued; and the Commission, having duly considered said petition and the record herein and having issued its order modifying the findings as to the facts heretofore issued, makes this its findings as to the facts and its conclusion drawn therefrom.

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MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, J. E. Todd, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 3167 Delaware Avenue, Kenmore, N. Y.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the offering for sale, sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of a medicinal preparation designated as "Todd's Capsules," which is recommended by the respondent for use in the treatment of rheumatism, arthritis, neuritis, and other similar diseases and conditions. Respondent causes said preparation, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce 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 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 preparation by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and the respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements in newspapers, magazines, and other periodicals having a general circulation, and also in circulars containing reprints of testimonial letters, folders, and other advertising material, are the following:

FREE
INFORMATION TO SUFFERERS FROM
ARTHRITIS AND RHEUMATISM

These painful diseases can be relieved. Our old English prescription has been kept a secret for more than 30 years. It has proven its merit in many difficult cases.

The capsules are designed and used for the purpose of alleviating the pain occurring in such maladies as Rheumatism, Arthritis, Neuritis and the like. No

Immediate relief is given by their use. Favorable results are not expected until they have been used for one hundred days; and in stubborn and exaggerated cases longer use is necessary.

This Folder May Prove

A MESSAGE OF JOY

to those with rheumatic, arthritis or neuritis distress who may possibly find blessed relief at last with Todd's Capsules!

I got your second box on August 1940 and when I got through with it I had no more rheumatic pain so I thought I would not need any more. Today I can say I have not had any rheumatic pain for more than a year.

Several years ago I had neuritis in my right side. For months could not use my arm, at times the pain was so very severe that it seemed I would lose my mind.

After trying Todd's Capsules could see that I certainly was getting relief, so continued using them until I was quite O. K.

Four years ago I was a helpless cripple from arthritis, now I am walking without either wheel chair or crutches and only use a cane on the street and can do quite a lot of work.

Thanks to the Almighty God and Todd's Capsules, I cannot praise Todd's Capsules too highly and wish every sufferer from arthritis could give Todd's Capsules a fair trial and get well.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondent's said preparation, respondent has represented directly and by implication that its medicinal preparation designated as "Todd's Capsules" is an effective treatment for rheumatism, arthritis, neuritis, and similar diseases and conditions; that it will relieve the symptoms of pain associated with such diseases and conditions; and that it has curative properties in the treatment thereof.

PAR. 5. The foregoing representations and advertisements are grossly exaggerated, false, and misleading. In truth and in fact, said preparation is not an effective treatment for rheumatism, arthritis, and neuritis and similar diseases or conditions and will not relieve the symptoms of pain associated with such diseases and conditions, and said preparation does not possess curative properties in the treatment of any such diseases and conditions.

PAR. 6. Arthritis is an inflammatory condition of the joints of the human body; neuritis is an inflammation of the nerves; and rheumatism is an inflammatory condition of the muscles and joints. All three of these conditions are attended with a considerable amount of pain. Arthritis is caused by many conditions of the human system, many of which are unknown or cannot be determined. If the cause of this condition can be ascertained, treatment to remove the cause may have some beneficial effect. In the absence of an ascertained cause, the

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usual treatment is directed to alleviating the symptoms of pain attendant upon such condition. Arthritis is noted for its characteristic of spontaneous remissions, during which time the manifestations of this condition, and particularly the symptoms of pain, disappear.

PAR. 7. On the label of its preparation respondent represents that its capsules contain magnesium oxide, olibanum, sodium bicarbonate, and calcium carbonate. Magnesium oxide is an alkalizer which counteracts acidity in the stomach and acts as a mild laxative; calcium carbonate is mildly alkalizing; and sodium bicarbonate is a rapid alkalizer which counteracts acidity in the stomach and has a mild laxative action. Olibanum is a gummy resin, the chief sources of which are Arabia and East Africa. It is commonly known as "frankincense," which has aromatic properties but little or no use in modern medicine.

An analysis of respondent's preparation was made by a chemist employed by the Food and Drug Administration. This chemist testified that olibanum contains about 20 percent of gum, which is an alcohol-soluble constituent, and that after making an ether-alcohol extract of respondent's preparation he found not more than traces of gum in the residual material. He further testified that tests made for the presence of rosin gave indications of resinous material which is not found in olibanum. This analysis indicates either that respondent's preparation contains no olibanum or that only an insignificant amount of olibanum is present.

PAR. 8. Based upon the testimony of well-qualified physicians versed in the knowledge of pharmacy and the use and effect of drugs, some of whom have specialized for years in the study and treatment of arthritis and kindred ailments, the Commission finds that the ingredients of respondent's preparation, including the ingredient olibanum, used either singly or in combination, have no beneficial or therapeutic value in the treatment of arthritis, neuritis, or rheumatism and will not relieve the symptoms of pain associated with such ailments and conditions. The therapeutic value of this preparation, if used in adequate amounts, is limited to neutralizing the acids of the stomach contents and the action of a mild laxative. The preparation possesses no antiseptic or germicidal properties which provide effective action in the gastro-intestinal tract or increase the white corpuscles of the blood to the extent of having any beneficial effect upon any toxic or infectious condition of the body. There is no ingredient in respondent's preparation which has analgesic properties, and, consequently, this preparation has no value in relieving or alleviating the symptoms of pain associated with arthritis, neuritis, or rheumatism.

The only testimony offered by respondent came from two osteopathic physicians. Their testimony indicated a limited knowledge of

pharmacology. These witnesses testified about the use of respondent's preparation in the treatment of arthritis without knowledge as to the causative factors thereof and on the theoretical basis that toxic conditions of the gastro-intestinal tract are generally the causative factors of arthritis, a theory which has long been disproved by modern medicine and is not now accepted by the consensus of opinion of the medical profession. Furthermore, these witnesses used this preparation without knowledge of its actual or true composition and without knowledge of its therapeutic properties. These witnesses further attributed the alleged therapeutic value of this preparation to the element olibanum, which position is decisively refuted by the unqualified testimony of the medical experts, who clearly established the scientific fact that respondent's preparation, either containing or not containing olibanum, possesses no therapeutic value whatever in the treatment of arthritis and the kindred ailments for which respondent has recommended it.

PAR. 9. The use by the respondent of the foregoing, false, deceptive, and misleading statements and representations with respect to the therapeutic value of its preparation has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and that respondent's preparation has therapeutic value in the treatment of arthritis, neuritis, and rheumatism, and, because of such erroneous and mistaken belief, such members of the purchasing public have purchased substantial quantities of respondent's said preparation.

CONCLUSION

The aforesaid acts and practices of the respondent 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 TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, supplemental report of the trial examiner, and briefs and supplemental briefs filed

¹ Order published herewith was made as of July 27.

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in support of the complaint and in opposition thereto; 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, J. E. Todd, 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, or distribution of its medicinal preparation designated "Todd's Capsules," 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 by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that respondent's preparation has any therapeutic value in the treatment of arthritis, neuritis, or rheumatism or similar diseases or conditions; or that said preparation will relieve or alleviate the symptoms of pain associated with such diseases or conditions; or that said preparation possesses curative properties in the treatment of any of such diseases or conditions.

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 respondent's medicinal preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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.

Syllabus

IN THE MATTER OF

MICHAEL E. LEE, MYRON E. LEE AND KENNETH L. LEE,
TRADING AS LEE-SONS AND AS MERLEKCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4868. Complaint, Nov. 6, 1942—Decision, Oct. 19, 1943*

Where three individuals engaged in interstate sale and distribution of their "Merlek" mineral water consisting of filtered sea water to which at one time was added potassium iodide; through statements in pamphlets, circulars, and other advertising media, including testimonial letters—

- (a) Represented directly and by implication that a deficiency of minerals is responsible for 90 percent of all diseases or ailments; that mineral balance is the controlling factor in keeping one in health; and that the use of their product would correct mineral imbalance in the system;

The facts being that only a very small fraction of all diseases or ailments are attributable to mineral deficiency; and while mineral balance is necessary to good health, occurrence of mineral imbalance is rare, and product in question could not either correct it or correct conditions arising therefrom;

- (b) Represented that plant foods are produced from impoverished soils and do not contain the mineral elements essential to nourishment and good health; and that their product was the natural source of minerals and provided the body with adequate amounts in proper balance;

The facts being that the great bulk of food crops is produced on soil which contains most of the mineral elements required by man; the normal diet contains adequate minerals and it is difficult to provide a diet which does not contain sufficient quantities, with the exception of calcium, iron and iodine; as respects the latter, its said product did not contain sufficient calcium and iron to be effective in cases of their deficiency; and while in areas lacking iodine in the soil, it might have been useful in the prevention of simple goiter while potassium iodide was being added, this would not apply in nongoiter areas nor even in goiter areas where iodized salt or other sources of iodine are used; and product in question was not natural source of minerals—which is to be found in the plant and animal food consumed in the ordinary diet—and would not provide the body with adequate amounts of minerals in proper balance;

- (c) Represented that the efficiency of each mineral is enhanced by proper amounts of the others, and that their product furnished the proper amount of each to provide the greatest efficiency of all;

The facts being that proper balance of minerals in the body is maintained by the body processes and not by the intake of the minerals themselves; and no fixed percentage of minerals can be represented as a proper balance, since a lack of minerals, when it exists, varies with different persons; and

- (d) Falsely represented, through dissemination of printed excerpts from court testimony involving their product, that said preparation was a cure and effective treatment for a large number of diseases and ailments, including eczema, Bright's disease, high blood pressure, diabetes, arthritis, rheumatism, enlargement of the heart, nervousness, etc.;