

Complaint

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IN THE MATTER OF
THE ADLERIKA COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4927. Complaint, Mar. 9, 1943—Decision, July 11, 1945*

Where a corporation engaged in the interstate sale and distribution of its Adlerika laxative medicinal preparation—

Failed to reveal in advertisements facts material in the light of the representations contained therein with respect to consequences which might result from the use of said preparation under usual or prescribed conditions in that it should not be used in the presence of abdominal pains, nausea, vomiting or other symptoms of appendicitis, as set forth on the container labels;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said preparation was entirely safe and harmless and might be taken at all times without danger of ill effects, and to cause it to purchase substantial quantities thereof, as a result:

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. S. F. Rose for the Commission.

Blair, Korner, Doyle & Appel, of Washington, D. C., for respondent.

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 The Adlerika Company, 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, The Adlerika Company, is a corporation, organized and existing under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at St. Paul, Minn.

PAR. 2. The respondent is now, and for several years last past has been, engaged in the offering for sale, sale and distribution of a laxative medicinal preparation known and designated as "Adlerika." Respondent causes said preparation, when sold, to be shipped from its said place of business in the State of Minnesota to its pur-

chasers thereof located in the various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times herein mentioned has maintained, a course of trade in its said medicinal preparation in commerce between and among the various States of the United States.

PAR. 3. Respondent in the course and conduct of its business as aforesaid has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its medicinal 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 said medicinal 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.

The advertisements so disseminated by respondent are, in substance, that its preparation constitutes an effective treatment for constipation and certain conditions represented as symptomatic thereof.

PAR. 4. Respondent's advertisements, disseminated as aforesaid, constitute false advertisements for the reason that they fail to reveal facts material in the light of such representations or material with respect to the consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements, or under such conditions as are customary and usual. In truth and in fact, respondent's said preparation is a laxative and is potentially dangerous when taken by one suffering from abdominal pains, stomachache, cramps, nausea, vomiting or other symptoms of appendicitis.

PAR. 5. The failure of the respondent to disclose in its said advertising matter that the use of its preparation, under the conditions prescribed in said advertisements, or under such conditions as are customary or usual, may be potentially dangerous, 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 said preparation is entirely safe and harmless and may be taken at all times without ill effects to the user and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparation.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudices 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 9th day of March, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, The Adlerika Company, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 29, 1943, the respondent filed its answer in this proceeding. Thereafter a stipulation was entered into, whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondent expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter this proceeding regularly came on for final hearing before the Commission on the complaint, answer and stipulation, said stipulation having been approved, accepted and filed; and the Commission, having duly considered the same 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, The Adlerika Company, is a corporation, organized and existing under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at St. Paul, Minn.

PAR. 2. The respondent is now, and for several years last past has been, engaged in the offering for sale, sale and distribution of a laxative medicinal preparation known and designated as "Adler-ika." Respondent causes said preparation, when sold, to be shipped

from its said place of business in the State of Minnesota to the purchasers thereof located in the various other States of the United States and in the District of Columbia.

Respondent maintains, and at all times herein mentioned has maintained, a course of trade in its said medicinal preparation in commerce between and among the various States of the United States.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its medicinal 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 said medicinal 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.

PAR. 4. "Adler-i-ka" is a laxative and depends upon the active ingredients of magnesium sulphate, cascara and frangula to effect a movement of the bowels. When taken according to the recommended dosage, "Adler-i-ka" will cause the evacuation of the bowels and may cause an increase in the severity of appendicitis and its symptoms when taken by a person suffering from appendicitis.

PAR. 5. Respondent's advertising, disseminated as aforesaid prior to December, 1944, failed to reveal that "Adler-i-ka" should not be used in the presence of abdominal pains, nausea, vomiting or other symptoms of appendicitis, nor does such advertising contain any warning with respect to the use of said preparation in the presence of appendicitis or symptoms thereof.

PAR. 6. Respondent's labeling placed on bottles containing "Adler-i-ka," among other things, contains the following:

ADLERIKA effectively combines the laxative properties of MAGNESIUM SULPHATE (Epsom Salt U.S.P.), CASCARA and FRANGULA with the carminative properties of FERNAL, ANISE, CARAWAY, SASSAFRAS, and GINGER together with LICORICE, GLYCERIN, CARBONATE OF MAGNESIA, OIL OF CINNAMON and METHYL SALICYLATE.

DIRECTIONS

For Gas in the Stomach or Bowel and for Occasional Constipation.

Average Adult Dose:

1 to 2 tablespoonfuls.

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Children:

Age 5 to 10 years 1 to 2 teaspoonfuls

10 to 15 years $\frac{1}{2}$ to 1 tablespoon

For Occasional Constipation

For most effective laxative action ADLERIKA should be taken occasionally as needed, $\frac{1}{2}$ hour before breakfast with at least $\frac{1}{2}$ glass of water. If more convenient it may be taken before any other meal or at bed time.

Distressing STOMACH GAS and HEARTBURN are often relieved by a dose of one teaspoonful. If stomach gas is not relieved after taking one teaspoonful, this dose may be repeated in an hour and again in three hours, but not more than four doses should be consumed.

CAUTION—Do not use this preparation, or any other laxative, when abdominal pain, nausea, vomiting or other symptoms of appendicitis are present. Consult your physician. The frequent or continued use of a laxative may result in a dependency upon such products for elimination.

PAR. 7. The Commission finds that the advertisements disseminated by respondent with respect to its preparation constituted false advertisements in that they failed to reveal facts material in the light of the representations contained therein, and material with respect to consequences which might result from the use of the preparation under the conditions prescribed in the advertisements or under such conditions as are customary or usual; that is, the advertisements failed to reveal that the said preparation should not be used in the presence of abdominal pains, nausea, vomiting or other symptoms of appendicitis.

PAR. 8. The use by the respondent of these false advertisements had a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said preparation is entirely safe and harmless and might be taken at all times without danger of ill effects to the user and the tendency and capacity to cause such portion of the public to purchase substantial quantities of said preparation as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices 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, the answer of the respondent and a stipulation as to the facts entered into between

respondent herein and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The Adlerika Company, a corporation, and 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 respondent's medicinal preparation designated "Adler-i-ka," 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:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to reveal that the said preparation advertised should not be used in the presence of abdominal pains, nausea, vomiting or other symptoms of appendicitis; provided, however, that such advertisement need contain only the statement, "CAUTION: Use Only as Directed," if and when the directions for use, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain a warning to the above effect;

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 of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to comply with the requirements set forth 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.

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IN THE MATTER OF
ZO-LON COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5132. Complaint, Feb. 24, 1944—Decision, July 12, 1945*

Where an individual engaged in the interstate sale and distribution of a medicinal preparation designated as "Zo-Lon Compound" and "Zo-Lon"; through advertisements in newspapers and by other means—

Represented falsely that said preparation constituted a competent and effective treatment for obesity and that its use would result in substantial and satisfactory reduction in weight without resort to strenuous exercise or starvation diet, through such statements as "Take off Ugly Fat With Grapefruit Juice Recipe. Now you may slim down your figure and lose pounds of ugly fat, without back-breaking exercises or starvation diet. Try this home recipe to bring back alluring curves and graceful slenderness. * * * Wonderful results may be obtained quickly. Just get four ounces of Zo-Lon Compound from your druggist. Stir two table-spoons in a glass of unsweetened grapefruit juice at mealtime. Reducing is Fun With This Home Recipe. * * * Results are guaranteed."

The facts being that any reduction in weight that might result from use of said preparation in connection with diet and exercise would be attributable to the diet and not to the preparation;

With effect of misleading a substantial portion of the purchasing public into the mistaken belief that said representations were true and into the purchase of substantial quantities of said product by reason 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. B. G. Wilson for the Commission.

Rosen, Francis & Cleveland, of Chicago, Ill., for respondent.

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 A. T. Wilson trading as Zo-Lon Company, hereinafter referred to as respondent, has 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, A. T. Wilson, is an individual, trading as Zo-Lon Company, with his principal place of business located at 422 South Akard Street, Dallas, Tex. Said business is conducted as a partnership, the partners being respondent A. T. Wilson and