

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;

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- (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,

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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

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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

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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

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the purchase of substantial quantities of Artex by reason of said erroneous and mistaken belief.

PAR. 6. The aforesaid acts and practices of 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated May 21, 1953, the initial decision in the instant matter of hearing examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission, it appearing that while service of the initial decision was completed on April 20, 1953 and respondents filed notice of intention to appeal therefrom on April 29, 1953, they failed to file appeal brief before May 20, 1953.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on November 30, 1949, issued and subsequently served its complaint in this proceeding upon respondents Reliance Pharmacal Company, a corporation, and Edward S. Morris, William Berrian and Florence T. Morris, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the issuance of the complaint herein and the filing of respondents' answer thereto, hearings were held, at which evidence was received in support of the allegations of the complaint. On August 25, 1950, counsel for the respondents and counsel in support of the complaint entered into a stipulation, thereafter supplemented by a further stipulation dated June 30, 1952, in which they agreed that the above-named hearing examiner might be substituted for the hearing examiner originally designated herein; that the formula and therapeutic effect of respondents' preparation "Artex" are substantially the same as those of the preparation "Dolcin," involved in the proceeding before the Federal Trade Commission entitled "In the Matter of Dolcin Corporation, et al., Docket No. 5692"; and that the entire transcript of all hearings held in that proceeding, together with such evidence as had been and might thereafter be taken in the present proceeding, should be included in the record herein. Thereafter, this proceeding regularly came on for initial adjudication by the above-named hearing examiner on the entire record, including proposed find-

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ings as to the facts and conclusions presented by counsel supporting the complaint, counsel for respondents not having submitted proposed finding as to the facts or conclusions; and the hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public, and makes the following findings as to the facts, conclusions drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Reliance Pharmacal Company is a corporation organized under the laws of the State of California, and has its office and principal place of business in Nevada City, California.

At the time of the issuance of the complaint herein, respondents Edward S. Morris, William Berrian and Florence T. Morris were directors and, respectively, President, Vice President, and Secretary-Treasurer of said corporation; all of said individual respondents had offices in Nevada City, California, and were in control of the management, policies and operation of respondent Reliance Pharmacal Company with respect to the acts, practices and methods hereinafter set forth.

Respondents, at the time of the issuance of the complaint herein and for approximately one year prior thereto, engaged in the business of selling and distributing a certain medicinal preparation designated "Artex" which is a drug preparation within the meaning of the Federal Trade Commission Act.

PAR. 2. Respondent William Berrian, since April 7, 1950, has had no connection with the respondent corporation. He is not now engaged in or employed by any organization selling any preparation similar to the drug preparation "Artex," or for which claims are made similar to the claims that were made for "Artex," and has given his assurance, in writing, that he does not intend again to engage therein.

PAR. 3. The formula and directions for the use of respondents' said drug preparation "Artex" are as follows:

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.

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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 detail 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. * * *.

PAR. 4. Respondents caused the said drug preparation "Artex," 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, at all times herein mentioned, maintained a course of trade in the said drug preparation "Artex" in commerce between and among the various States of the United States. Respondents' volume of business in said preparation averaged approximately \$5,000 per month.

PAR. 5. In the course and conduct of their business, respondents, subsequent to March 21, 1938, have disseminated and caused the dissemination of certain advertisements concerning the drug prepara-

tion "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 included those published in newspapers in various cities in California during 1949, which were sent through the United States mails and had an interstate circulation; one periodical, "Grit," published in Williamsport, Pennsylvania, during 1949; various radio continuities broadcast in 1949 over various broadcasting stations located in the State of California and in Mexico; display cards and other other display advertising disseminated to retail druggists.

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

PAR. 6. Typical of the statements and representations contained in said advertisements are the following:

CONCLUSIVE PROOF OF RESULTS: SUCCESS REPORTED IN HUNDREDS OF CASES.

A recent article* published by one of America's finest medical authorities states that 396 cases of arthritis, osteoarthritis, rheumatoid arthritis, mixed arthritis, spondylitis, hypertrophic and atrophic arthritis of the spine* and acute rheumatic polyarthritis were administered Calcium Succinate and Acetylsalicylic Acid in combination (ingredients used in ARTEX formula) and 208 cases of osteoarthritis treated showed 95% definite improvement in 8 days, "in 34 cases of acute rheumatic polyarthritis, the therapeutic response was more dramatic than in any other categories of arthritis studied . . . all evidence of rheumatic activity disappeared within 14 days!" Other arthritic types have shown similar results under the prescribed treatment.

ARTEX AIDS ALL FORMS OF ARTHRITIS

Rheumatic and arthritis pain can strike almost every joint, muscle and part of the body. Arthritis and rheumatism, however, have many forms each with different symptoms. Enlarged joints are known as osteoarthritis. Infection of the joints and accompanying fluids is known as rheumatoid arthritis, skin around infected areas may be swollen or red. Still another form of arthritis is the specific infectious type. The components of ARTEX have proved successful in every type.

YOU NEED NOT SUFFER THE PAIN OF ARTHRITIS, RHEUMATISM, NEURITIS, SCIATICA OR BURSITIS.

ARTEX for neuritis, gout, bursitis and kindred inflammatory diseases as well as arthritis and rheumatism. Work . . . play . . . live again. ARTEX may be your answer.

If you are among the even greater numbers crippled by rheumatism, neuritis, sciatica, bursitis and lumbago, take heed. . . . ARTEX is here! ARTEX is clinically proven.

*Dr. Murrel M. Szucs, Ohio State Medical Journal, October, 1947.

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ARTEX FOR THE RELIEF OF SYMPTOMS OF ARTHRITIS, RHEUMATISM, NEURITIS, SCIATICA, LUMBAGO, MIGRAINE HEADACHE, FEMALE PERIOD PAINS.

ARTEX seeks to reduce the swelling, stiffness, shooting pains and crippling effects that are the symptoms of arthritis and similar diseases.

ARTEX, another triumph of 20th century medical progress, is now available at low cost to every man, woman and child who knows what it is to suffer the searing torment of arthritis, rheumatism, neuritis, sciatica, lumbago, gout, bursitis, migraine headaches and female period pain.

ARTEX is non-toxic, alkalizing when absorbed into the blood stream, helping nature to remove the uric acid which often aggravates pain.

ARTEX contains:

CALCIUM SUCCINATE—not a drug but a normal constituent of tissues, a physiological catalyst which converts to citric acid in the body. Calcium succinate stimulates cellular respiration, protects tissues, eliminates toxicity of acetylsalicylic acid.

ACETYLSALICYLIC ACID—an analgesic which suppresses rheumatic activity, acts favorably in preventing onset of arthritis and when combined as in ARTEX with Calcium Succinate may be taken in larger daily dosages without toxic effect, valvular reaction or gastrointestinal disturbances.

PARA AMINOBENZOIC ACID—is particularly effective as a tissue builder, and helps nature repair damaged joints.

THIAMIN HYDROCHLORIDE (Vitamin B1) promotes a sense of well being, an important daily requirement.

PAR. 7. Through the above-quoted advertisements and others similar thereto, respondents have represented, directly and by implication, as follows:

1. That Artex is an adequate, effective and reliable treatment for, will arrest the progress of, will correct the underlying causes of, and will cure all forms of arthritis and rheumatism and kindred ailments, including neuritis, sciatica, bursitis, gout and lumbago;
2. That Artex, taken as directed, will prevent arthritis;
3. 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. That Artex alkalizes when absorbed into the blood stream and helps nature to remove the uric acid;
5. That calcium succinate, one of the ingredients of Artex, stimulates cellular respiration, protects tissues and eliminates toxicity of acetylsalicylic acid, another ingredient of Artex;
6. That para aminobenzoic acid, one of the ingredients of Artex, is effective as a tissue builder and helps nature repair damaged joints;
7. That thiamin chloride, one of the ingredients of Artex, promotes a sense of well being;
8. That acetylsalicylic acid, one of the ingredients of Artex, suppresses rheumatic activity and prevents the onset of arthritis.

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PAR. 8. The terms "arthritis" and "rheumatism" are general terms, sometimes used interchangeably, which may refer to any of many diseases or pathological conditions, including, among others, 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. These pathological conditions are of known as well as unknown origin. Examples of those of unknown origin are rheumatoid arthritis, osteomyelitis and rheumatic fever. Examples of such conditions of known causes are infectious arthritis, such as arthritis of syphilis, arthritis of gonorrhea, and arthritis associated with pneumonia and tubercular infections. In addition there are forms of arthritis, such as gout, which are connected with disturbances of metabolism.

Fibrositis is an irritation or discomfort, a syndrome of pain and stiffness which arises in the fibrous tissues of the body.

The term "neuritis" is a general term referring to an inflammation of the nerves, and denotes many different diseases resulting from various causes, such as infections, pressure on nerves from displaced organs or structures of the body, invasion of the nerve by neoplasm or tumor, intoxication with metals or toxins, and metabolic disturbances such as the form of neuritis occurring in diabetes.

Sciatica is a common form of neuritis felt along the course of the sciatic nerve. It is not a disease, but may occur as a symptom of many different diseases resulting from various causes, such as pressure on the sciatic nerve, a tumor in the spine, infection or inflammation of the sheath of the sciatic nerve, metabolic disturbances caused by toxins resulting from infection, fibrositis or arthritis involving the joints.

Lumbago is a form of fibrositis manifesting itself as a painful condition in the lower part of the back, of varying severity, sometimes so mild as hardly to interfere with a man's business, in other instances so violent as to render him unable to move in bed. Lumbago is associated with stiffness and muscle spasm provoked by attempts to move.

Bursitis is a form of fibrositis having specific reference to inflammation of a bursa, the fibrous sac or membrane surrounding a joint, and may result from invasion of the bursa by various germs, such as streptococcus, mycobacterium, gonococcus, and the tubercle bacillus, and from rheumatic or fibrositic inflammation.

Infectious arthritis is a form of arthritis resulting from invasion of a joint by any one of various germs, such as staphylococcus and streptococcus, which are carried to the joint through the bloodstream from a focus of infection in the body, caused by an external wound or by various infectious diseases.

Osteoarthritis refers to a disease characterized by degenerative changes in the joints and other tissues and organs of the body. The clinical phenomena associated with osteoarthritis are pain, painful stiffness associated with movement of the joint, enlargement of some joints, narrowing of joint spaces, increase in size of joint surfaces, growth of spurs and increase in the extent of margins of the joint.

Rheumatoid arthritis is a chronic, progressive, destructive disease affecting joints and organs of the body, characterized by pain, swelling, stiffness and limitation of motion in joints and deterioration of the patient's general health. This disease is accompanied by pathological changes in the joints, such as thickening of the lining membrane; production of excessive fluid in the bursa in some instances, and absorption of fluid in others; atrophy of muscles, and sometimes destruction of portions of the bone ends, resulting in deformation of the joint. The cause of rheumatoid arthritis is unknown.

Gout is a disease connected with the disturbance of the metabolic functions of the body, and is accompanied by the symptoms of pain, swelling, redness and stiffness.

PAR. 9. The various pathological conditions generally referred to as "arthritis" and "rheumatism" 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. Such a diagnosis may require any or all of the following determinations:

1. History of the patient, including information as to age, sex, marital status, occupation, chronology of the present ailment; family history, such as age and cause of death of parents and relatives; any illnesses from which the patient may have suffered previously, particularly rheumatic fever, scarlet fever and streptococcus infections;
2. Detailed physical examination of every part of the patient's anatomy; and
3. Laboratory examination, such as blood count, serological test for syphilis, urinalysis, and certain other tests as they may seem useful in the individual case, such as X-ray and analysis of fluids in individual joints.

PAR. 10. An adequate, effective, or reliable treatment for any of the various types of ailments included in 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. 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, nor is there any drug or combination of drugs which can restore to normal the pathological changes which result from arthritic or rheumatic ailments.

PAR. 11. The drug preparation "Artex," however taken, will not constitute an adequate, effective, or reliable treatment for any arthritic or rheumatic condition, including, among others, neuritis, sciatica, lumbago, and bursitis, nor will said preparation arrest the progress, correct the underlying causes, prevent or effect a cure of any of such conditions. The drug preparation "Artex," however taken, will not ameliorate the aches, pains and discomforts of any arthritic or rheumatic condition to any extent beyond the temporary relief thereof afforded by its salicylate content as an analgesic and antipyretic. The drug preparation "Artex," however taken, will have no significant effect upon severe aches, pains and discomforts accompanying any arthritic or rheumatic condition, and will afford temporary relief of only minor aches, pains and discomforts. With the exception of such temporary relief, the drug preparation "Artex" cannot be depended upon to have any effect whatever upon the symptoms accompanying any arthritic or rheumatic condition, including, among others, neuritis, sciatica, lumbago and bursitis.

The drug preparation "Artex," because it contains acetylsalicylic acid, commonly known as aspirin, may have a transient and dependable effect upon the pain of gout, but will not have any effect upon the symptoms of swelling, redness and stiffness.

PAR. 12. The pain of migraine headaches is sometimes so severe that the drug preparation "Artex" will have practically no effect upon it. In no instance will relief be obtained in excess of such temporary and partial relief as the acetylsalicylic acid (aspirin) content of "Artex" will afford.

The drug preparation "Artex," taken as directed, will furnish only such temporary and partial relief from female period pains as its acetylsalicylic acid (aspirin) content will afford.

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The drug preparation "Artex" does not alkalize when absorbed into the bloodstream, nor does it help nature to remove uric acid.

PAR. 13. Calcium succinate, when taken orally, as in the drug preparation "Artex," is converted by the liver into sugar, and no significant amount of succinate, as such, reaches the bloodstream. Calcium succinate, as an ingredient of "Artex," is therapeutically inoperative.

PAR. 14. Para aminobenzoic acid, as an ingredient of the drug preparation "Artex," or however taken, does not build tissues, nor help nature repair damaged joints.

Thiamin chloride, as an ingredient of the drug preparation "Artex," will not promote a sense of well being in persons having any form of arthritis or rheumatism.

PAR. 15. Respondents' representations concerning the drug preparation "Artex," as hereinbefore found, are false and misleading in material respects; have had the capacity and tendency to mislead and deceive, and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true, and into the purchase of substantial quantities of said drug preparation as a result thereof; and constitute false advertisements within the intent and meaning of the Federal Trade Commission Act.

CONCLUSIONS

The acts and practices of respondents 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 meaning of the Federal Trade Commission Act.

In the light of the facts found in Paragraph Two, *supra*, there is no longer any public interest in proceeding further at this time as to respondent William Berrian. Accordingly, it appears that the complaint, insofar as it relates to respondent Berrian, should be dismissed, without prejudice.

ORDER

It is ordered, That respondent Reliance Pharmacal Company, a corporation, and its officers; respondents Edward S. Morris and Florence T. Morris, individually and as officers of said corporation; and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the drug preparation "Artex," or any 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:

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1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, as follows:

(a) that said preparation constitutes an adequate, effective or reliable treatment for neuritis, sciatica, bursitis, gout, lumbago or any other kind of arthritic or rheumatic condition;

(b) that said preparation will arrest the progress of, correct the underlying causes of or cure rheumatism or arthritis;

(c) that the use of said preparation will prevent any form of arthritis;

(d) that said preparation will afford any relief of the severe pains of neuritis, sciatica, gout, bursitis, lumbago or any other kind of arthritic or rheumatic condition, or have any effect on the stiffness or crippling effects that accompany some of these conditions;

(e) that said preparation will have any therapeutic effect upon any of the symptoms or manifestations of neuritis, sciatica, gout, bursitis, lumbago or any other kind of arthritic or rheumatic conditions in excess of affording temporary relief of minor aches, pains or fever;

(f) that said preparation will have any therapeutic effect upon migraine headache or the pains thereof, in excess of such temporary and partial relief of pain as its acetylsalicylic acid (aspirin) content will afford;

(g) that said preparation will have any therapeutic effect upon female period pains in excess of such temporary and partial relief of pain as its acetylsalicylic acid (aspirin) content will afford;

(h) that said preparation alkalizes when absorbed in the bloodstream, or helps nature to remove the uric acid;

(i) that calcium succinate, one of the ingredients of Artex, stimulates cellular respiration, protects tissues or eliminates the toxicity of acetylsalicylic acid, another ingredient of Artex;

(j) that para aminobenzoic acid, one of the ingredients of Artex, is effective as a tissue builder or helps nature repair damaged joints;

(k) that thiamin chloride, one of the ingredients of Artex, promotes a sense of well being in persons afflicted with arthritis or rheumatism;

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

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, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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Order

It is further ordered, That the complaint herein, insofar as it relates to respondent William Berrian, be, and the same hereby is, dismissed without prejudice to the right of the Commission to take future action as to said respondent, with respect to the issues here involved.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents, Reliance Pharmacal Company, a corporation, and its officers, and Edward S. Morris and Florence T. Morris, individually and as officers of said corporation, shall, within sixty (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 the order to cease and desist [as required by said declaratory decision and order of May 21, 1953].

IN THE MATTER OF
AQUELLA PRODUCTS, INC., AND PRIMA PRODUCTS,
INC., ET AL.

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

Docket 5622. Complaint, Nov. 24, 1948—Decision, June 1, 1953

Water may penetrate the masonry walls or floor of a basement by seepage, a broad term, which includes (1) leakage, namely, penetration of moisture through openings considerably larger than pore spaces, and (2) capillary penetration, namely, penetration through pore spaces or openings similar in size.

Where a corporation and its four officers, engaged in the competitive interstate sale and distribution of a mineral coating, designated "Aquilla", under rights conveyed to it by another concern; in advertisements in newspapers and periodicals of general circulation and by folders, pamphlets and other advertising material, directly or by implication—

- (a) Falsely represented that said product operated on an entirely new principle in the control of water seepage through masonry, by means of such typical statements as "Over and over Aquilla does 'the impossible' where all other materials failed. Working on an entirely new principle, this amazing mineral surface coating controls seepage above or below ground, inside or outside";

Notwithstanding the fact that the scrubbing of the product into the surfaces concerned did not, as contended, represent a new principle but was a method which had long been used in the application of cementitious water paint products;

- (b) Falsely represented that said product was used in waterproofing and controlling seepage in the Maginot Line; and
- (c) Represented that the manner of application of said product was as easy and almost as simple as whitewashing;

The facts being that while the directions for use were comparatively simple, they clearly indicated that proper application of the product was a painstaking task much more complicated and difficult than the simple process of whitewashing;

- (d) Represented that application of said product to the surface of all forms of porous masonry would positively prevent water leakage, dampness, and seepage above and below grade, and would render such surface impermeable to the passage of water regardless of its kind, porosity, or condition;

The facts being that while such a cementitious water paint was of value as a coating on the outside surface of masonry walls above grade, it would not prevent capillary penetration through the coating when used below grade on the inside; and while, properly applied, it might reduce leakage through