

COMPLAINT

IN THE MATTER OF

MISS YOUTH FORM CREATIONS CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6351. Complaint, May 16, 1955—Decision, Oct. 25, 1955

Consent order requiring distributors in New York City to cease furnishing retailers and dealers means for deceiving the purchasing public by misrepresenting on advertising mats, reprints, and other promotional material supplied them, and on tickets affixed to garments, the retail selling price, savings involved, and the quality and value of women's slips and underclothes.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Terral A. Jordan for the Commission.

Mr. Leroy E. Rodman, of New York City, and *Friedman, Locker & Schlezinger*, of Washington, D. C., 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 the Miss Youth Form Creations Corporation, a corporation, and Sid Kay and Irving L. Brown, individually and as officers of said corporation, 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. Respondent Miss Youth Form Creations Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 38 East 30th Street, New York, New York. Respondents Sid Kay and Irving L. Brown are President and Treasurer, and Vice-President and Secretary, respectively, of said corporate respondents. These individuals acting in conjunction with each other formulate, direct and control all of the policies, acts and practices of said corporation. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and have been, for more than six months last past, engaged in the sale and distribution of women's

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wearing apparel, including underclothes and slips, to retailers and dealers in commerce among and between the various States of the United States and in the District of Columbia. Said wearing apparel is sold to retailers and dealers for resale to the purchasing public.

Prior to the formation of the corporate respondent, Miss Youth Form Creations Corporation, the aforesaid business was transacted and conducted by Miss Youth Form Lingerie, Inc., a corporation. Subsequent to the formation of the said corporate respondent the latter named Miss Youth Form Lingerie, Inc., was consolidated therewith and the business continued in the aforesaid manner.

PAR. 3. In the course and conduct of their said business respondents have made and continue to make many representations respecting the retail selling price or savings in the purchase thereof or quality or value of said wearing apparel. These representations are and have been made in advertising mats, reprints and other promotional material supplied to retailers and dealers and on the tickets affixed by respondents to such wearing apparel prior to its sale and distribution as aforesaid.

Typical and illustrative of such representations are the following:

(a) Certain of the said advertising mats and reprints read in part:

You save \$3 on each slip.
100% Nylon * * * Tricot * * *
Made for 6.95 NOW \$3.95

Certain of the said tickets read:

100% Nylon Tricot.
Made for \$6.95

(b) Certain of the said advertising mats and reprints read in part:

You save \$2 on each slip!
DACRON NYLON CREPE * * *
FORMERLY 5.95 NOW \$3.95.

Certain of the said tickets read:

Dacron and Nylon Crepe.
Formerly \$5.95.

(c) Further illustrative of such representations appearing on certain of the said advertising mats and reprints are:

SPECIAL EVENT ½ OFF.
For a limited time only, we are able to offer these magnificent values—
100% opaque nylon slips that sold last week for twice the price—
yours at these give-a-way prices if you act quickly! * * *
FORMERLY 5.95 NOW \$2.95.

(d) Further illustrative of such representations appearing on certain of the said advertising mats and reprints are:

SPECIAL EVENT ½ OFF.

For a limited time only, we are able to offer these magnificent values—
100% opaque nylon slips that sold last week for twice the price—
yours at these give-a-way prices if you act quickly! * * *
MADE FOR 5.95 NOW \$2.95.

(e) Further illustrative of such representations appearing on certain of the said tickets are:

Reg. \$5.95.

Cotton Plisse * * * Nylon Tricot Trimming.

PAR. 4. Through the use of the foregoing statements and others similar thereto not specifically set forth herein, respondents have represented and now represent, directly or by implication:

(a) That their said wearing apparel sells and has sold at retail in the usual and customary course of business at prices substantially higher than the prices at which said wearing apparel is offered for sale.

(b) That the prices at which said wearing apparel is offered for sale constitutes a substantial reduction from the usual and customary retail selling prices at which such wearing apparel is or has been offered for sale and affords to the buyer at retail substantial savings in the purchase thereof.

(c) That the said wearing apparel offered for sale and sold at the prices therein stated is of a quality or value equal to similar merchandise made by other manufacturers and offered for sale and sold in the usual and customary course of business at the higher prices represented by respondents to be the usual and customary retail selling prices of their said wearing apparel.

PAR. 5. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

(a) Respondents' said wearing apparel does not sell and has not sold at retail, in the usual and customary course of business, at prices substantially higher than the prices at which said wearing apparel is offered for sale; but the lower advertised prices at which said wearing apparel is offered for sale constitute the usual and customary retail selling prices thereof.

(b) The prices at which respondents' said wearing apparel is offered for sale does not constitute a substantial reduction from the usual and customary retail selling prices at which said wearing apparel is and has been offered for sale and does not afford substantial savings to the purchaser thereof; but said lower prices are the usual

and customary retail selling prices at which such merchandise is and has been offered for sale.

(c) Respondents' said wearing apparel offered for sale and sold at the aforesaid prices is not of a quality or value equal to similar merchandise made by other manufacturers and offered for sale and sold in the usual and customary course of business at the higher prices represented to be the usual and customary retail selling prices of respondents' said wearing apparel.

PAR. 6. By furnishing to retailers and dealers advertising mats, reprints, and other promotional material and preticketed wearing apparel as aforesaid, respondents furnish to such retailers and dealers the means and instrumentalities through and by which they may mislead and deceive the purchasing public as to the usual and customary retail selling prices or savings in the purchase thereof or quality or value of its said wearing apparel.

PAR. 7. In the course and conduct of their business respondents are in direct and substantial competition with other corporations, firms and individuals engaged in the sale, in commerce, of women's wearing apparel including underclothes and slips.

PAR. 8. The aforesaid acts and practices of the respondents had and now have the capacity and tendency to mislead and deceive a substantial number of retailers, dealers and members of the purchasing public with respect to the usual and customary retail selling prices or savings in the purchase thereof or quality or value of respondents' said wearing apparel. As a result thereof substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 9. The aforesaid acts and practices of the respondents as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that Miss Youth Form Creations Corporation, a New York Corporation, with its office and principal place of business at 38 East 30th Street, New York, New York, and Sid Kay and Irving L. Brown, its President and Treasurer, and Vice President and Secretary, respectively, at the same address, have been and are now engaged in the sale and distribution in commerce of women's wearing apparel, including underclothes and slips, and that they have violated the Federal Trade Commission Act by making false, de-

ceptive and misleading statements and representations regarding their merchandise, for the purpose of inducing the purchase thereof by the public. After the issuance of the complaint, to which no answer was filed, respondents, their counsel, and counsel supporting the complaint, on August 22, 1955, entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director, Bureau of Litigation of the Commission and thereafter transmitted to the hearing examiner for consideration.

The agreement provides, among other things, that respondents admit all the jurisdictional facts alleged in the complaint and that the record herein may be taken as if findings of jurisdictional facts had been made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the order agreed upon, which may be altered, modified, or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon differs somewhat in form and wording from that contained in the Notice accompanying the complaint, but it fully covers all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest and accepts the Agreement Containing Consent Order to Cease and Desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondents, Miss Youth Form Creations Corporation, a corporation, and its officers, and Sid Kay and Irving L. Brown, individually and as officers of said corporate respondent, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of women's wearing apparel, including

underclothes and slips, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly, indirectly, or by implication, or providing retailers, dealers, or others with advertising mats, reprints, and pre-ticketed merchandise or other material, device, or plans which represent, directly, indirectly, or by implication:

1. That the regular retail selling price of respondents' said wearing apparel is any amount greater than the prices at which such wearing apparel is usually and customarily sold at retail by retailers regularly selling such wearing apparel;

2. That any retail price of said wearing apparel is a reduced price unless such price represents a reduction from the price at which respondents' said wearing apparel is or was usually and customarily sold at retail in the regular course of business or that any savings from regular retail prices for respondents' said wearing apparel are afforded to purchasers thereof when the price designated constitutes the regular retail selling price of respondents' said wearing apparel;

3. That the retail value of respondents' said wearing apparel is equal to the retail selling price of higher-priced merchandise made by other manufacturers and regularly selling or having been sold contemporaneously in the same general trade area supplied by respondents and such other manufacturers, unless respondents' said wearing apparel is in fact of a grade and quality comparable to said higher-priced merchandise, in which case respondents may so represent.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 25th day of October, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Miss Youth Form Creations Corporation, a corporation and Sid Kay and Irving L. Brown, 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.

Complaint

IN THE MATTER OF
CHESTER-KENT, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6874. Complaint, June 27, 1955—Decision, Oct. 26, 1955*

Consent order requiring a seller in St. Paul, Minn., to cease disseminating false advertising concerning the health-giving properties of its products "Yo-Zyme" and "Vinol Tonic."

Before *Mr. Abner E. Lipscomb*, hearing examiner.
Mr. Morton Nesmith for the Commission.

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 Chester-Kent, 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 Chester-Kent, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 96-102 South Wabasha Street, St. Paul, Minnesota.

PAR. 2. Respondent is now and for more than one year last past, has been engaged in the advertising and sale of food and drug products as "food" and "drugs" are defined in the Federal Trade Commission Act.

The designation used by respondent for its said products and the formulas and directions for use thereof are as follows:

Designation: Yo-Zyme

Formula:

Cheese Whey	67%
Yogurt	20%
Brewers Yeast	13%
Vanillin as flavor	

Directions for use:

2 or 3 tablets with each meal.