

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" as 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.

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Designation: Vinol Tonic

Formula:

2 fluid ounces contains:

1900 mg. Ferrous Gluconate

6 mcg. Vitamin B₁₂1.3 mg. Vitamin B₁with glycerophosphates of magnesium and calcium in base of
Muscatel and Tokay wines providing alcohol of 16%.

Directions for use:

Adults and children over 12 years, 1 tablespoonful, 4 times daily.

Children 6-12 years, 1 tablespoonful, 3 times daily.

Respondent has caused said products, when sold, to be transported from its place of business in the State of Minnesota, to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States.

PAR. 3. In the course and conduct of its aforesaid business, respondent has disseminated and caused the dissemination of advertisements concerning said products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers and magazines of general circulation and in circulars and leaflets, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products; and respondent has also disseminated and has caused the dissemination of advertisements concerning said products by various means, including but not limited to the means aforesaid, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Through the use of statements appearing in said advertisements respondent represented and now represents, directly or by implication, that the use of Yo-Zyme is effective in:

- (1) supplanting noxious bacteria in the intestines;
- (2) checking the growth of putrefying bacteria in the intestines;
- (3) promoting a healthy intestinal flora;
- (4) maintaining lactic acid producing organisms in the intestines;
- (5) aiding the digestion of other food by supplying protein-splitting enzymes;
- (6) improving digestion and intestinal health;
- (7) aiding in the absorption of alkaline minerals;
- (8) protecting vitamins;

(9) establishing body resistance to disease; and

(10) the treatment of weak kidneys, gall bladder troubles, constipation, headaches, nervousness, lack of pep, ulcers, gas, stomach upsets, diarrhea, nausea, eczema, hemorrhoids, and migraine.

Through the use of the statements appearing in said advertisements respondent also represented, and does now represent, directly or by implication, that the use of its product designated Vinol Tonic will give pep and energy to young children and older people, and that every pregnant woman will develop iron deficiency anemia unless she receives vigorous iron therapy.

PAR. 5. The said advertisements were and are misleading in material respects and constitute "false advertisements," as that term is defined in the Federal Trade Commission Act. In truth and in fact, the use of Yo-Zyme, as directed, will not be effective in:

- (1) supplanting noxious bacteria in the intestines;
- (2) checking the growth of putrefying bacteria in the intestines;
- (3) promoting a healthy intestinal flora;
- (4) maintaining lactic acid producing organisms in the intestines;
- (5) aiding the absorption of alkaline minerals;
- (6) protecting vitamins;
- (7) the treatment of constipation or headaches; for the reason that a daily intake of lactose of from 30 to 40 times that supplied by the Cheese Whey in Yo-Zyme is required to be effective in bringing about the foregoing results.

Further, the use of Yo-Zyme without regard to the amount taken will not be effective in:

- (8) aiding the digestion of other food, by supplying protein-splitting enzymes or otherwise;
- (9) improving digestion or intestinal health;
- (10) establishing body resistance to disease; and
- (11) the treatment of weak kidneys, gall bladder troubles, nervousness, lack of pep, ulcers, gas, stomach upsets, diarrhea, nausea, eczema, hemorrhoids.

In truth and in fact, respondent's product Vinol Tonic will not give young children or older people pep and energy unless those persons lack such pep and energy due solely to iron deficiency. Although many pregnant women will develop an iron deficiency anemia unless they receive vigorous iron therapy, this condition will not develop in all cases in the absence of such therapy.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations contained in said advertisements has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the errone-

ous and mistaken belief that such statements and representations are true and into the purchase of said products because of such erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondent, 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.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On June 27, 1955, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondent with unfair and deceptive acts and practices in connection with the sale in commerce of a drug preparation designated "Yo-Zyme," in violation of the Federal Trade Commission Act.

Thereafter, on July 28, 1955, the Respondent filed with the Commission its answer to the complaint, and on August 24, 1955, entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the hearing examiner an Agreement Containing Consent Order to Cease and Desist, disposing of all of the issues involved in this proceeding.

Respondent is identified in the agreement as a Minnesota corporation, with its principal office and place of business located at 96-102 South Wabasha Street, St. Paul, Minnesota.

Respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record herein may be taken "as if findings of jurisdictional facts had been duly met in accordance with such allegations," which is interpreted to mean that Respondent agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondent waives any further procedure before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that Respondent's answer shall be considered as having been withdrawn; 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; and that this agreement is for settlement purposes only and does not constitute an admission by Respondent that it has violated the law as alleged in the complaint.

The agreement sets forth that the order to cease and desist contained therein shall have the same force and effect as if entered after a full

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hearing; that the order to cease and desist may be altered, modified or set aside in the manner provided for other orders; and that the complaint herein may be used in construing the terms of the order.

In his memorandum the Agreement Containing Consent Order to Cease and Desist, counsel in support of the complaint states that the agreement has been submitted to and approved by the Division of Scientific Opinions, and that the order contained therein covers all of the substantive charges of the complaint and provides an appropriate basis for settlement and disposition of this proceeding.

In the light of the aforesaid statement and from an examination of the order and the complaint herein, it appears that such order will safeguard the public interest to the same extent as could be accomplished by the issuance of an order after full hearing and all other adjudicative procedure waived in said agreement. Therefore, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist and finds that the Commission has jurisdiction over the Respondent and over its acts and practices as alleged in the complaint, and that this proceeding is in the public interest. Accordingly,

It is ordered, That the Respondent, Chester-Kent, Inc., 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 Yo-Zyme and Vinol Tonic, or any other products of substantially the same 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, 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:

(a) That the use of Yo-Zyme as directed:

(1) will be effective in supplanting noxious bacteria in the intestines;

(2) will be effective in checking the growth of putrefying bacteria in the intestines;

(3) will be effective in promoting healthy intestinal flora;

(4) will be effective in maintaining lactic-acid-producing organisms in the intestines;

(5) will be effective in aiding the absorption of alkaline minerals;

(6) will be effective in protecting vitamins;

(7) will be effective in the treatment of constipation or headaches;

(b) That the use of Yo-Zyme, without regard to the amount taken:

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- (1) will be effective in aiding the digestion of other food, by supplying protein-splitting enzymes or otherwise;
 - (2) will improve digestion or intestinal health;
 - (3) will establish body resistance to disease;
 - (4) will be effective in the treatment of weak kidneys, gall-bladder troubles, nervousness, lack of pep, ulcers, gas stomach upsets, diarrhea, nausea, eczema and hemorrhoids;
- (c) That the use of Vinol Tonic will give young children or older people pep and energy unless those persons lack such pep and energy due solely to iron deficiency;
- (d) That all pregnant women will develop an iron deficiency anemia unless they receive vigorous iron therapy;

2. Disseminating, or causing to be disseminated, any advertisements, 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 the food and drug preparations "Yo-Zyme" and "Vinol Tonic," which advertisement contains any of the representations prohibited in paragraph 1 of this order.

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 26th day of October, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Chester-Kent, Inc., a corporation, shall, within sixty (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 the order to cease and desist.

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IN THE MATTER OF

GENERAL PRODUCTS CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6303. Complaint, Mar. 2, 1955—Decision, Oct. 29, 1955*

Consent order requiring sellers in Los Angeles, Calif., to cease disseminating false advertisements, including powerful radio broadcasts from Mexico, concerning the therapeutic and health-giving qualities of their food supplement, "Autry's Minerals."

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

Mr. Joseph Callaway and *Mr. L. E. Creel, Jr.*, for the Commission.

Ervin, Cohen & Jessup, of Beverly Hills, 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 General Products Corporation, a corporation, and David Ormont and Alan Mann, individually and as officers of said corporation, and Dean Simmons, an individual, 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 General Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1016½ South Spaulding Avenue, Los Angeles, California. Respondents David Ormont and Alan Mann are the officers of the corporate respondent. These individuals control the policies, activities and practices of the corporate respondent, including the acts and practices hereinafter alleged. The addresses of these individual respondents is the same as that of the corporate respondent.

PAR. 2. Said respondents are now and have been since before the first of March, 1954, engaged in the sale and distribution of a preparation containing ingredients which come within the classification of drugs and food as the terms "drug" and "food" are defined in the Federal Trade Commission Act.