

Complaint

125 F.T.C.

IN THE MATTER OF

VENEGAS INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3781. Complaint, Jan. 23, 1998--Decision, Jan. 23, 1998

This consent order prohibits, among other things, the New York company and its officer from making unsubstantiated health claims about Alen, a powdered nutritional supplement comprised of wheat germ, wheat bran, soybean extract, and seaweed extract. The consent order also prohibits the respondents from making any representations as to the benefits, performance, or efficacy of any food, drug or dietary supplement without possessing and relying upon competent and reliable scientific evidence to support the claims.

Appearances

For the Commission: *Donald D'Amato, Denise Tighe and Michael Bloom.*

For the respondents: *William Bendix, Brooklyn, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Venegas Inc., a corporation, and Angel Venegas, individually and as an officer of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Venegas Inc. is a New York corporation with its principal office or place of business at 500 Grand Street, Brooklyn, New York.

2. Respondent Angel Venegas is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, participates in, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Venegas Inc.

3. Respondents have advertised, offered for sale, sold, and distributed products to the public, including "Alen," a powdered nutritional supplement that contains wheat germ, wheat bran, soybean extract, and seaweed extract. Advertisements for Alen have appeared

in El Diario, a Spanish language newspaper in the New York City metropolitan area. "Alen" is a "food" and/or "drug" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52, 55.

4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

5. Respondents have disseminated or have caused to be disseminated advertisements for Alen, including but not necessarily limited to the attached Exhibit A (a newspaper advertisement). This advertisement contains the following statements:

"What is Alen?

.... a super nutrient which increases our life expectancy, and its balanced formula prevents aging.

Alen is a cellular reconstructor

- (1) Delays the aging process
- (2) Eliminates anemia
- (6) Furnishes raw matter for increasing the immune system's defenses
- (9) Controls addiction to excess fat and sweets
- (10) Increases memory and scholastic performance. ...
- (14) For diabetics it helps in the natural production of insulin
- (15) Notably reduces rheumatic pain and migraines
- (16) Protects against infections and increases (enhances) the healing process
- (19) Lowers blood pressure
- (20) Helps heal ulcers
- (23) Increases muscular bulk without the need for steroids

Alen is a unique product -- Recognized worldwide" (Exhibit A)

6. Through the means described in paragraph five, respondents have represented, expressly or by implication, that Alen:

- A. Increases life expectancy;
- B. Delays the aging process;
- C. Eliminates anemia;
- D. Increases the immune system's defenses;
- E. Increases memory and scholastic performance;
- F. Helps diabetics naturally produce insulin;
- G. Reduces the pain of rheumatism and migraines;
- H. Lowers blood pressure;
- I. Helps heal ulcers;
- J. Increases muscle bulk;
- K. Controls addictions to excess fat and sweets; and

- L. Protects against infections and increases and enhances the healing process.

7. Through the means described in paragraph five, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph six at the time the representations were made.

8. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph six at the time the representations were made. Therefore, the representation set forth in paragraph seven was, and is, false or misleading.

9. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Commissioner Thompson and Commissioner Swindle not participating.

EXHIBIT A

Alen Translation

What is Alen?

It consists of nutrients with the ability of being immediately absorbed such as: high concentrations of Oligoelementos (?) in complex organic molecules, yeast, enzymes, biotin, essential amino acids, fibers, and marine algae/seaweed.

Your health is your most valued treasure.

30 Years of Investigation involves a super nutrient which increases our life expectancy, and its balanced formula prevents premature aging.

Alen is a cellular reconstructor

- (1) Delays the aging process
- (2) Eliminates anemia
- (3) Regenerates hair and skin
- (4) Increases physical and mental energy
- (5) Increases pleasure in living and sexual vigor
- (6) Furnishes raw matter for increasing the immune system's defenses
- (7) Regulates sleep
- (8) Reestablishes intestinal function/operation
- (9) Controls addictions to excess fat and sweets
- (10) Increases memory and scholastic performance
- (11) Increases athletic performance
- (12) Complete nutrition and appropriate diet
- (13) Increases vital energy
- (14) For diabetics it helps in the natural production of insulin
- (15) Notably reduces rheumatic pain and migraines
- (16) Protects against infections and increases (enhances) the healing process
- (17) Reduces cholesterol and triglycerides with its non-soluble fibers
- (18) Reduces uric acid by increasing urinary frequency
- (19) Lowers blood pressure
- (20) Helps heal ulcers
- (21) Serves to alleviate anxiety, distress, and nervousness
- (22) Increases nail growth and strength
- (23) Increases muscular bulk without the need for steroids

Alen is a unique product

Recognized worldwide

Alen

Metabolic Harmonizer 100% Organic

Health * Youth * Vitality

Dr. Oscar Argas Machuca

How do you take Alen

Alen is taken with juices, shakes, milk or yogurt. Add one heaping tablespoon of Alen to a glass with your favorite beverage . Mix for a few seconds. Drink immediately after preparing.

You can find it in the best pharmacies and health food stores.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Venegas Inc. 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 500 Grand Street, Brooklyn, New York.

Respondent Angel Venegas is an officer and director of the corporate respondent. Mr. Venegas, individually or in concert with others, formulates, directs, and controls the policies, acts, and practices of said corporation, and his business address is the same as that of the said corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. Unless otherwise specified, "*respondents*" shall mean Venegas Inc., a corporation, its successors and assigns and its officers; Angel Venegas, individually and as an officer of the corporation; and each of the above's agents, representatives and employees.

3. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Alen or any other product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product:

- A. Increases life expectancy;
- B. Delays the aging process;
- C. Eliminates anemia;
- D. Increases the immune system's defenses;
- E. Increases memory or scholastic performance;
- F. Helps diabetics naturally produce insulin;
- G. Reduces the pain of rheumatism or migraines;
- H. Lowers blood pressure;
- I. Helps heal ulcers;
- J. Increases muscle bulk;
- K. Controls addictions to excess fat and sweets; or
- L. Protects against infections and increases and enhances the healing process;

unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II.

It is further ordered, That respondents, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Alen or any food, dietary supplement, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, or efficacy of such product, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III.

Nothing in this order shall prohibit respondents from making any representation for any product that is specifically permitted in the labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

IV.

Nothing in this order shall prohibit respondents from making any representation for any drug that is permitted in the labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

V.

It is further ordered, That respondent Venegas Inc., and its successors and assigns, and respondent Angel Venegas shall, for five (5) years after the last date of dissemination of any representation

covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

It is further ordered, That respondent Venegas Inc., and its successors and assigns, and respondent Angel Venegas, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

It is further ordered, That respondent Venegas Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the

corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

VIII.

It is further ordered, That respondent Angel Venegas, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

IX.

It is further ordered, That respondent Venegas Inc., and its successors and assigns, and respondent Angel Venegas shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

X.

This order will terminate on January 23, 2018, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;

- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Commissioner Thompson and Commissioner Swindle not participating.

Complaint

125 F.T.C.

IN THE MATTER OF

BEYLEN TELECOM, LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3782. Complaint, Jan. 23, 1998--Decision, Jan. 23, 1998

This consent order prohibits, among other things, two companies and an officer from falsely advertising that using their special "viewer" would be "free" and from disconnecting consumers from their local Internet service provider and reconnecting them to international numbers assigned to the country of Moldova. The consent order requires that the proposed settlement include the payment of redress funds to AT&T and MCI, which will issue credits to their customers who were billed for the calls, and to the FTC, which will issue refunds to customers of other long-distance carriers who were billed for the calls.

Appearances

For the Commission: *Paul Luehr* and *Eileen Harrington*.

For the respondents: *Joel R. Dichter, Klein, Zelman & Rothermel*,
New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Beylen Telecom, Ltd. and NiteLine Media, Inc., corporations, and Ron Tan, individually and as an officer of NiteLine Media, Inc. ("the respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Beylen Telecom, Ltd., ("BTL") is a corporation organized, existing and doing business under and by virtue of the laws of the Cayman Islands with its principal office or place of business at Genesis Building, PS Box 2097, Grand Cayman, Cayman Islands, British West Indies.

2. NiteLine Media, Inc. ("NiteLine") is a corporation doing business under and by virtue of the laws of the State of New York with its principal office or place of business at 7302 19th Avenue, Brooklyn, New York.