

## Complaint

## IN THE MATTER OF

## EVELYN MILLER TRADING AS VITALIFE, ETC.

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

*Docket 8398. Complaint, May 15, 1961—Decision, Sept. 23, 1961*

Consent order requiring an individual in Cedar Rapids, Iowa, to cease making false therapeutic claims for her "Vitalife Vitamins and Minerals" in circulars, brochures, and radio commercials, as set forth in the order below.

## 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 Evelyn Miller, an individual trading as Vitalife, Vitalife Vitamins, Vitalife Products and Vital Health-Foods Co., 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 Evelyn Miller is an individual trading as Vitalife, Vitalife Vitamins, Vitalife Products and Vital Health-Foods Co., with her principal office and place of business located at 1404 First Avenue East, in the City of Cedar Rapids, State of Iowa.

PAR. 2. Respondent is now, and for some time last past has been engaged in the sale and distribution of a preparation containing ingredients which come within the classification of food, as the term "food" is defined in the Federal Trade Commission Act.

The designation used by respondent for her said preparation, the formula thereof and directions for use are as follows:

*Designation:* Vitalife Vitamins and Minerals

*Formula:*

Each capsule contains:

Vitamin B-12 (as in strobotomyces fermentation extractives).....	4.0 mcg.
Vitamin A (synthetic).....	6,000 U.S.P. Units
Vitamin D (irradiated Ergosterol).....	1,000 U.S.P. Units
Vitamin B-1 (Thiamine Mononitrate).....	20.0 mgm.
Vitamin B-2 (Riboflavin).....	6.0 mgm.
Vitamin B-6 (Pyridoxine Hydrochloride).....	1.0 mgm.
Vitamin C (Ascorbic Acid).....	100.0 mgm.
Liver Desiccated (defatted).....	50.0 mgm.
Calcium Pantothenate.....	3.0 mgm.
Calcium (as Dicalcium Phosphate Anhydrous)....	78.0 mgm.

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*Formula:—Continued*

Each capsule contains:—Continued

Phosphorus (Dicalcium Phosphate)-----	54.0 mgm.
Niacinamide-----	30.0 mgm.
Iron (as Ferrous Sulfate Dried)-----	20.0 mgm.
Folic acid-----	.25 mgm.
Rustin-----	10.0 mgm.
Vitamin E (as di-alpha Tocopheryl Acetate equivalent by biological assay to)-----	2.5 I.U.
Glutamic Acid-----	12.0 mgm.
Inositol-----	20.0 mgm.
Choline Dihydrogen Citrate-----	20.0 mgm.
Potassium Iodide-----	0.15 mgm.
Manganese (as Manganese Sulphate Anhydrous)---	0.3 mgm.
Copper (as Copper Sulfate)-----	0.2 mgm.
Magnesium (as Magnesium Sulfate)-----	0.4 mgm.
Zinc (as Zinc Sulfate)-----	0.08 mgm.

In a base of Brewer's Yeast

*Directions:*

Adults—1 capsule daily or as directed by the physician.

PAR. 3. Respondent causes the said preparation, when sold, to be transported from her place of business in the State of Iowa to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of her said business, respondent has disseminated, and caused the dissemination of, certain advertisements concerning the said preparation 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, circulars and brochures, and by means of radio broadcasts transmitted by radio stations located in various States of the United States having sufficient power to carry such broadcasts across State lines, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said preparation; and has disseminated, and caused the dissemination of, advertisements concerning said preparation by various means, including but not limited to the aforesaid media, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical, and illustrative, but not all-inclusive of the statements and representations contained in said advertisements disseminated as hereinabove set forth are the following:

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If you tire easily, if you feel run-down or are subject to stress and strain due to a vitamin and mineral deficiency, \* \* \* try \* \* \* VITALIFE \* \* \*. \* \* \* Don't let a nutritional deficiency rob you of youthful vigor and vitality. Replenish your body with high potency VITALIFE Capsules to help you feel better, look better, sleep better.

If you \* \* \* are subject to \* \* \* tension due to a vitamin and mineral deficiency \* \* \* take \* \* \* VITALIFE and feel the difference in just a few days time!

Don't think you are getting old because you are constantly tired, weak, run-down and nervous . . . or, if you suffer from digestive distress, restless, sleepless nights, due to a lack of vitamins and minerals! Why not test \* \* \* VITALIFE \* \* \*!

This time of year, during changeable weather, is when those miserable colds sneak up on us! If you're tired, weak, nervous and run-down because of a vitamin and mineral deficiency, a cold can develop into something much more dangerous! \* \* \* Take high-potency VITALIFE!

VITAMIN A—A deficiency of Vitamin A, may cause poor complexion, night blindness, rough dry skin, may reduce resistance to infections of the mucous membranes.

VITAMIN B-1—A deficiency of Vitamin B-1 (Thiamine) may cause nervousness, poor digestion, vague aches and pains, constipation, tiredness, sleeplessness, sluggish gall bladder, heart palpitation.

VITAMIN B-2—A deficiency of Vitamin B-2 (Riboflavin) may cause sore lips, sores about corners of the mouth, itching and burning of the eyes, cataracts, low vitality, tongue and mouth inflammation.

VITAMIN B-6—A deficiency of Vitamin B-6 (Pyridoxine) may cause extreme muscular weakness, leg cramps, dermatitis, certain nervous disorders.

VITAMIN B-12—A deficiency of Vitamin B-12 may cause anemic conditions, tiredness, weakness, sluggish conditions.

VITAMIN C—A deficiency of Vitamin C (Ascorbic Acid) may cause bleeding gums, rheumatic, arthritic aches and pains, muscle stiffness, brittle bones, infection, pyorrhetic conditions,\* \* \*, weakened blood vessel walls.

VITAMIN D—A deficiency of Vitamin D may cause poor bone structure, bad teeth, calcium deficiency, rickets, arthritis.

IRON—A deficiency of Iron may cause anemia, lack of pep, energy, vitality, pale complexion, improper development of red blood cells, palpitation of the heart, & general run-down condition.

CALCIUM—A deficiency of Calcium may cause muscle soreness, headaches, rheumatic, arthritic aches and pains, nervousness, wasting, shrinking and fragility of the bones, spasms, poor teeth, low metabolism, attacks of cramping leg muscles while in bed at night.

\* \* \*

NIACINAMIDE—A deficiency of Niacin (Niacinamide) may cause nervousness, mental inactivity, headaches, dizziness, insomnia, digestive distress, despondency.

CALCIUM PANTOTHENATE—A deficiency of Calcium Pantothenate may cause gray hair, loss of hair, inflammation of intestinal tract, certain types of nerve degeneration.

PAR. 6. Through the use of the said advertisements and others similar thereto not specifically set out herein, respondent has repre-

sented and is now representing, directly and by implication, that "Vitalife Vitamins and Minerals":

(a) Will be of benefit in the prevention and treatment of colds, sluggish gall bladder, heart palpitation, cataracts, rheumatic and arthritic aches and pains, arthritis, pyorrhetic conditions, shrinking of the bones, low metabolism, gray hair, loss of hair, inflammation of the intestinal tract and certain types of nerve degeneration.

(b) Will be of benefit in the treatment of tiredness, weakness, nervousness, nervous disorders, restlessness, sluggishness, insomnia, lack of pep, energy, vigor and vitality, mental inactivity, headache, dizziness, constipation, digestive distress, despondency, poor complexion, rough dry skin, infections of the mucous membranes, sore lips, mouth sores, bleeding gums, ocular itching and burning, inflammations of tongue and mouth, muscular weakness, leg cramps, dermatitis, muscle stiffness, infection, weakened blood vessel walls, bad teeth, pale complexion, general run-down condition, brittle bones, wasting and fragility of the bones, and spasms.

PAR. 7. The said advertisements were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact "Vitalife Vitamins and Minerals":

(a) Will not be of benefit in the prevention or treatment of colds, sluggish gall bladder, heart palpitation, cataracts, rheumatic or arthritic aches or pains, arthritis, pyorrhetic conditions, shrinking of the bones, low metabolism, gray hair, loss of hair, inflammation of the intestinal tract, or any type of nerve degeneration.

(b) Except in a small minority of persons in whom such symptoms are caused by an established deficiency of one or more of the nutrients provided by the preparation, will not be of benefit in the treatment of tiredness, weakness, nervousness, nervous disorders, restlessness, sluggishness, insomnia, lack of pep, energy, vigor or vitality, mental inactivity, headache, dizziness, constipation, digestive distress, despondency, poor complexion, rough dry skin, infections of the mucous membranes, sore lips, mouth sores, bleeding gums, ocular itching or burning, inflammations of tongue or mouth, muscular weakness, leg cramps, dermatitis, muscle stiffness, infection, weakened blood vessel walls, bad teeth, pale complexion, general rundown condition, brittle bones, wasting or fragility of the bones, or spasms.

Furthermore, the statements and representations in said advertisements have the capacity and tendency to suggest and do suggest to persons who are tired, weak, nervous, restless, sluggish, despondent and constipated, who have nervous disorders, weakened blood vessel walls, bad teeth and pale complexion, who lack pep, energy, vigor and vitality, who are mentally inactive, and who suffer from headache,

dizziness, digestive distress, insomnia, poor complexion, rough dry skin, infections of the mucous membranes and other infections, sore lips, mouth sores, ocular itching and burning, inflammations of tongue and mouth, muscular weakness, leg cramps, dermatitis, bleeding gums, muscle stiffness, brittle bones, wasting and fragility of the bones, and spasms that there is a reasonable probability that they have symptoms which will respond to treatment by the use of respondent's preparation. In the light of such statements and representations, said advertisements are misleading in a material respect and therefore constitute "false advertisements" as the term is defined in the Federal Trade Commission Act, because they fail to reveal the material fact that in the great majority of persons having any of the symptoms set out above in subparagraph (b) of PARAGRAPH SIX, none of these said symptoms is caused by an established deficiency of one or more of the nutrients provided by "Vitalife Vitamins and Minerals", and that in such cases the said preparation will be of no benefit.

PAR. 8. The dissemination by the respondent of the false advertisements, as aforesaid, constituted, and now constitutes, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

*Mr. Berryman Davis* for the Commission.

*Frank E. and Arthur Gettleman*, by *Mr. Frank E. Gettleman*, Chicago, Ill., for the respondent.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint in this proceeding, issued May 15, 1961, charges the above-named respondent with violation of the provisions of the Federal Trade Commission Act.

On July 31, 1961, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondent that she has violated the law as alleged in the complaint, and that the complaint may be used in construing the terms of the order.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Evelyn Miller is an individual trading as Vitalife, Vitalife Vitamins, Vitalife Products, and as Vital Health-Foods Co., with her office and principal place of business located at 1404 First Avenue East in the City of Cedar Rapids, State of Iowa.

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

## ORDER

*It is ordered,* That Evelyn Miller, an individual trading as Vitalife, Vitalife Vitamins, Vitalife Products and Vital Health-Foods Co., or under any other trade name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation designated Vitalife Vitamins and Minerals, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist, directly or indirectly, from:

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

(a) That said preparation will be of benefit in the prevention or treatment of colds, sluggish gall bladder, heart palpitation, cataracts, rheumatic or arthritic aches or pains, arthritis, pyorrhetic conditions, shrinking of the bones, low metabolism, gray hair, loss of hair, inflammation of the intestinal tract, or any type of nerve degeneration.

(b) That said preparation will be of benefit in the treatment of tiredness, weakness, nervousness, nervous disorders, restlessness, sluggishness, insomnia, lack of pep, energy, vigor or vitality, mental inactivity, headache, dizziness, constipation, digestive distress, dependency, poor complexion, rough dry skin, infections of the mucous membranes, sore lips, mouth sores, bleeding gums, ocular itching or

