

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

ANDREW TOTH and RICHARD ZATTA,	:	JULY TERM 2002
	:	
Plaintiff,	:	No. 03886
	:	
v.	:	COMMERCE PROGRAM
	:	
BODYONICS, LTD. d/b/a PINNACLE	:	Control Nos. 051996, 051192
and GENERAL NUTRITION	:	
COMPANIES, INC.,	:	
	:	
Defendants.	:	

ORDER AND MEMORANDUM OPINION

AND NOW, this __6th__ day of November, 2003, upon consideration of the Preliminary Objections to the Amended Complaint of defendant, Bodyonics, Ltd., and the Preliminary Objections to the Amended Complaint of defendant, General Nutrition Companies, Inc., the responses thereto, the memoranda in support and in opposition, and all other matters of record, and in accordance with the memorandum opinion entered contemporaneous herewith, it is hereby **ORDERED** that said Preliminary Objections are **OVERRULED**.

Defendants shall file their Answer(s) to the Amended Complaint within twenty (20) days of the date of entry of this Order.

BY THE COURT,

GENE D. COHEN, J.

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MEMORANDUM OPINION

Plaintiffs purport to represent a class of persons who purchased certain steroid hormone products manufactured by Bodyonics and sold by GNC. Defendants allegedly misrepresented that such products would increase plaintiffs’ muscle mass, but the products did not.¹ Plaintiffs have asserted a claim against both defendants for violation of the catch-all provision of the UTCPL and a claim against GNC only for unjust enrichment. Both defendants have filed preliminary objections to the Amended Complaint.

I. Preliminary Objections Based On Improper Venue

Defendants claim that this action should have been brought in Allegheny County where GNC has its headquarters and where plaintiffs are located. Defendants’ arguments against venue are more appropriate to a forum non conveniens motion than to preliminary objections based on improper venue. See Kubik v. Route 252, Inc., 762 A.2d 1119, 1123 (Pa. Super. 2000).

“[A] personal action against a corporation or similar entity may be brought in . . . a county where it regularly conducts business.” Pa. R. Civ. P. 2179(a)(2). Defendant GNC

¹ According to plaintiffs, if such products had worked as advertised, they would have fit the definition of anabolic steroids, which are controlled substances, and defendants’ over-the-counter sale of them would have been illegal.

regularly conducts business in Philadelphia County, so venue is proper here with respect to GNC. Likewise, it appears that defendant Bodyonics routinely sells its products in Philadelphia County, so venue is proper here with respect to Bodyonics. Even if Bodyonics did not do business here, Philadelphia County would still be a proper venue with respect to it because venue is proper here with respect to its co-defendant GNC. *See* Pa. R. Civ. P.1006(c).

II. Preliminary Objections to UTPCPL Claims

Defendants object that plaintiffs have failed to allege with specificity any misrepresentations that defendants made and upon which plaintiffs relied. However, the complaint is rife with representations that defendants allegedly made regarding the muscle building properties of their products. Furthermore, the plaintiffs allege that they purchased and consumed those products in order to build muscle. One can infer from those allegations that plaintiffs relied upon defendants' representations in purchasing defendants' products.²

III. Preliminary Objections to Unjust Enrichment Claims

GMC objects that plaintiffs have not alleged that GNC received any benefit that it would be inequitable for GNC to retain. However, plaintiffs clearly allege that they paid money to GNC for a worthless product. Therefore, plaintiffs have alleged that they conferred a benefit on GNC for which plaintiffs may be entitled to receive "restitution in quantum meruit." Schenck v. K.E. David, Ltd., 446 Pa. Super. 94, 98, 666 A.2d 327, 329 (1995).

² Although the court is willing to find that plaintiffs have sufficiently pled reliance at this Preliminary Objection stage, the court will not necessarily imply reliance at later stages in the proceedings. For example, plaintiffs will have great difficulty convincing this court to certify a class with respect to the UTPCPL claim because the requirement that each plaintiff prove his/her individual reliance under the UTPCPL usually precludes a finding of commonality. *See Solarz v. DaimlerChrysler Corp.*, April Term 2001, No. 02033 (October 30, 2003) (Cohen, J.)

CONCLUSION

For all of the foregoing reasons, defendants' Preliminary Objections to plaintiffs' Amended Complaint are overruled.

BY THE COURT,

GENE D. COHEN, J.

Dated: November 6, 2003