

Complaint

88 F.T.C.

IN THE MATTER OF

NAGLE, SPILLMAN & BERGMAN, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-2834. Complaint, Aug. 18, 1976 — Decision, Aug. 18, 1976*

Consent order requiring a Los Angeles, Calif., advertising agency, among other things to cease misrepresenting that Adolph's salt substitute tastes like salt; misrepresenting the causal relationship between sodium intake and hypertension; salt reduction will result in better health; and that salt substitutes may be safely used without medical approval. Further, the order prohibits respondent from advertising salt substitutes without a warning statement that product should not be used by persons on potassium restricted diets, or without prior medical approval. Additionally, the order requires specific disclosures with regard to endorsements by professionals.

*Appearances*For the Commission: *Sharon S. Armstrong.*For the respondent: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nagle, Spillman & Bergman, Inc., a corporation, hereinafter referred to as respondent, has violated Sections 5 and 12 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Respondent is a California corporation with its office and principal place of business located at 1800 North Highland, Los Angeles, California.

All allegations stated in the present tense include the past tense.

PAR. 2. Respondent was the advertising agency for Adolph's Ltd. (hereinafter Adolph's) from January 1972 to March 1974, and at all times relevant to this complaint. In such capacity respondent created, prepared, placed for publication and disseminated advertisements for Adolph's, including but not limited to the advertisements described herein, to promote the sale of Adolph's salt substitute, a "food" and "drug" (as those terms are defined in the Federal Trade Commission Act) which consists of potassium chloride and other ingredients and is used in place of table salt by persons who seek to restrict their intake of sodium.

PAR. 3. In the course and conduct of its business, respondent

disseminated and caused to be disseminated certain advertisements concerning Adolph's salt substitute, (1) by United States mail, magazines of interstate circulation, radio and television broadcasts of interstate transmission, and by various other means in or having an effect upon commerce, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of Adolph's salt substitute, and (2) by various means, for the purpose of inducing, or which are likely to induce, the purchase in or having an effect upon commerce of Adolph's salt substitute, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the advertisements disseminated as aforesaid, respondent made statements and representations concerning the therapeutic and prophylactic value of Adolph's salt substitute in the treatment of certain medical conditions.

Typical of some of the statements and representations in said advertisements, but not all inclusive thereof, are the following:

NO. 1 KILLER OF BLACKS:

HYPERTENSION

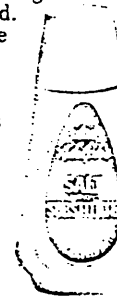
The facts you are about to read could save your life or that of a loved one.

Hypertension is the single largest cause of all deaths in the United States. Of particular concern is the fact that black adults are especially prone to this disease. The incidence of hypertension among blacks is almost twice that of the general population. In fact, it is estimated this disease will afflict up to 25% of all black adults.

Why are black Americans so vulnerable to hypertension, high blood pressure and heart disease? Experts attribute it to factors relating to heredity, emotional and socio-economic pressures, obesity—and diet.

With respect to diet, the relationship between salt intake and hypertension or high blood pressure, one of the major causes of strokes and coronaries, is well established. That is why physicians treating hypertension almost invariably prescribe reduction of salt in the diet. Foods containing large amounts of sodium are severely restricted. Of course, no drastic dietary changes should be undertaken without consulting your doctor.

If you want to reduce your intake of salt or if your physician specifically prescribes a low sodium diet, you should know about America's leading salt substitute, Adolph's. This product looks, sprinkles and tastes like salt. That's why many doctors have been recommending it to their patients for over 15 years. You can find Adolph's Salt Substitute in the dietetic section of your food store. Available regular or seasoned.



Job 354 Ad No. A-63
1/4 page, B&W — Salt Substitute
Ebony — Tuesday
Nagle & Spillman, Los Angeles
1973

Cramps

aren't really
the worst of it.

It's the premenstrual fatigue, depression, the bloated feeling that make so many women miserable. Some doctors believe these symptoms are aggravated by "edema," the condition when the body retains too much fluid. To help prevent edema, many doctors suggest reducing salt intake for 10 days before each period. If your doctor suggests this, you're probably looking for a good salt substitute—so you can still have some zest in your food while cutting down on salt.

Adolph's Salt Substitute looks, tastes, and sprinkles on just like salt and has no bitter aftertaste. It's in the dietetic section of your market.



Job 389 Ad A-70
1/6 Page — Salt Substitute, 1974
Family Circle
Woman's Day
Redbook
Cosmopolitan
Nagle & Spillman, Inc.
Los Angeles

ONE COPY
K942 012
10-12-AT
1481711

By JEANNETTE FRANK
Nutritionist and Author

ADVERTISEMENT

You May Be Eating More Salt Than You Should

Nutrition authorities caution against excessive salt intake. But there is an easy and appetizing alternative.

AMERICAN eating patterns are undergoing revolutionary changes. More than ever before, people are consuming more of their meals away from home. The spectacular growth of chain restaurants is testimony to this trend. Between-meal snacking is another current phenomenon as is the popularity of pre-prepared convenience foods. It seems we are eating or snacking all day long, frequently away from home, and often on the run. Many meals are even being consumed in our cars!

The accelerating pace of modern living has certainly changed our eating habits. But it has also brought in its wake an increase in our consumption of sodium chloride, ordinary table salt. Snack foods, convenience foods, foods served in restaurants tend to be heavily seasoned with salt. And salt, that generally harmless, most common of all household staples, may not be medically indicated when consumed in excessive quantities.

What are the possible nutritional pitfalls of salt? The connection between salt intake and hypertension or

high blood pressure, one of the major causes of strokes and coronaries, has been known since the beginning of the century. But there are many other reasons to avoid salt. Excess salt holds fluid in body tissues, and retained fluid may contribute to problems related to overweight. Some doctors advise reduction of salt intake to women suffering excessive discomfort and depression resulting from menstruation. Arthritis sufferers are sometimes advised to reduce sodium intake when undergoing steroid therapy. Of course, no drastic dietary changes should be undertaken without consulting your doctor.

If you want to reduce your intake of salt or if your physician specifically prescribes a low sodium diet, you should know about America's leading salt substitute, Adolph's. This product looks, sprinkles and tastes like salt and has no bitter aftertaste. That's why many doctors have been recommending it to their patients for over 15 years. You can find Adolph's Salt Substitute in the dietetic section of your food store. Available regular or seasoned.

TV VIOLENCE IS HARMFUL

put vast control over our children's minds into the hands of broadcasters, toy and food manufacturers, and other commercial interests whose dominant concern is what's good for profits and sales. "We are the only nation whose broadcasting treats children as a means of advancing corporate profits and not as a national treasure," says Mrs. Cooney.

Toward Concrete Reforms. What can be done about this scandalous situation?

First, we must refrain from using television as a baby-sitter. One Advisory Committee survey of parents of 274 first-graders shows that one third actually encouraged their children to watch TV just to keep them occupied—in some cases for five or more hours daily. Schools, churches, PTAs and other groups should ask their television stations for public-service time to present the message: "Too much TV can be hazardous to your child's mental health." In addition, parents must spend more time watching with their children, and simply shutting off the violent programs. Since reading the Advisory Committee's research findings, I have adopted this rule with my own daughters.

Second, we need an independent system of television evaluations provided by child-development specialists. Under a Department of Health, Education and Welfare grant, the University of Pennsylvania is attempting to develop an objective method of monitoring trends in the level of network-television violence

and correlating them with children's behavior. We also need to evaluate the beneficial programs. Studies show that programs like "Sesame Street," "Electric Company," and "Mister Rogers' Neighborhood" produce truly marvelous benefits in our children's learning. Perhaps the FCC could require stations to give advance publicity to such an objective rating guide so parents could decide for themselves the programs their children should watch.

Third, the FCC has before it a

*The FCC has this power. Under Congressional mandate, it protects and the enforcement of the governmentally protected public interest, in order for which broadcasters agree to program "in the public interest" is defined and supervised by the seven FCC members.



Readers Digest Aug 1 1977

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning not expressly set out herein, respondent represented directly or by implication that:

A. The relationship between salt intake and hypertension is well established.

B. Use of Adolph's salt substitute in place of table salt will result in a reduction of sodium intake to a level low enough to:

1. Save the lives of blacks and other people;
2. Reduce the causes and effects of, or prevent, hypertension, high blood pressure, heart disease, strokes and coronaries in blacks and others;
3. Reduce the causes and effects of, or prevent, premenstrual edema and other discomforts associated with menstruation in women, including fatigue, depression, and bloatedness.

C. Adolph's salt substitute may be used safely without prior physician approval.

D. Physicians treating hypertension and premenstrual edema prescribe reduction of salt intake for these conditions.

E. Adolph's salt substitute tastes like table salt.

PAR. 6. In truth and in fact:

A. While some medical authorities suggest there is data which apparently supports a representation that there is a connection between sodium intake and hypertension, the relationship between salt or sodium intake and hypertension is not well established.

B. A significant amount of sodium is ingested through the consumption of other foods and water in the diet. If other dietary habits are not modified, it is highly unlikely that use of Adolph's salt substitute in place of table salt will result in a reduction in sodium intake to a level low enough to be medically effective. The use of Adolph's salt substitute by any person regardless of race or sex without other medically prescribed measures will not save life, is highly unlikely to reduce the causes and effects of, or prevent, hypertension, high blood pressure, heart disease, strokes, coronaries, premenstrual edema or any discomfort associated with menstruation.

C. Adolph's salt substitute should not be used without prior physician approval. Even the label on the Adolph's salt substitute container states that it should be used only on the advice of a physician. Unless managed by a physician, a sodium-restricted diet may be dangerous to persons with impaired sodium retention mechanisms or

endocrine imbalances, and persons subject to vomiting, excess sweating, or diarrhea. Furthermore, ingestion of potassium contained in Adolph's salt substitute may be harmful to persons with renal insufficiency.

D. Physicians treating hypertension and premenstrual edema do not always prescribe reduction of salt intake for these conditions; indeed, many physicians use drug therapy or other measures instead of or in combination with salt intake reduction.

E. Adolph's salt substitute does not taste like table salt.

PAR. 7. In view of the allegations set forth in Paragraphs Five and Six, the following are material facts which respondent failed to disclose in its advertising of Adolph's salt substitute:

A. Before using Adolph's salt substitute an individual should consult a physician to determine whether the product is necessary or safe for his or her use.

B. Adolph's salt substitute should not be used by persons on a potassium-restricted diet.

Such facts are "material" as defined in Section 15 of the Federal Trade Commission Act, and, if known to potential customers, would be likely to affect their decision to purchase Adolph's salt substitute.

PAR. 8. In the further course and conduct of its business respondent disseminated and caused the dissemination of a magazine advertisement set out in the format of a news article with the name "Jeannette Frank" and the title "Nutritionist" placed at the heading of the article in a manner indicating authorship. In the use of said advertisement, respondent failed to disclose that Jeannette Frank is an employee of Adolph's. Such fact is material and, if known to potential customers, would be likely to affect their decision to purchase Adolph's salt substitute.

PAR. 9. The advertisements referred to in Paragraphs Four, Seven and Eight are misleading in material respects, as alleged in Paragraphs Six, Seven and Eight, and constitute "false advertisements," as that term is defined in Section 15 of the Federal Trade Commission Act, and the statements, representations and omissions described in Paragraphs Five, Seven and Eight are misleading, deceptive and unfair acts or practices.

PAR. 10. The use by respondent of the aforesaid false, misleading and deceptive and unfair statements, representations, acts and practices and the dissemination of the aforesaid "false advertisements" has the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said statements and representations are true, and

into the purchase of substantial quantities of Adolph's salt substitute by reason of said erroneous and mistaken belief.

PAR. 11. In the course and conduct of its business, respondent is in substantial competition in commerce with corporations, firms and individuals engaged in the sale of services of the same general kind and nature as are sold by respondent.

PAR. 12. The aforesaid acts and practices of respondent, including the dissemination of "false advertisements" as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair and deceptive acts and practices in or affecting commerce and unfair methods of competition in or affecting commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent that the law has been violated as alleged in such complaint, 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 respondent has violated the said Act, and that 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 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:

A. Respondent Nagle, Spillman & Bergman, Inc. is a California corporation with its office and principal place of business located at 1800 North Highland, Los Angeles, California.

B. 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

I

It is ordered, That respondent Nagle, Spillman & Bergman, Inc., a corporation, its successors and assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of Adolph's salt substitute or any similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Making any representation orally, visually or in any other manner, directly or by implication:

1. That the causal relationship between salt or sodium intake and the onset of hypertension is well-established.

2. That a causal relationship between salt or sodium intake and hypertension or any condition or disease exists, or that a reduction in the level of sodium intake will promote or maintain good health, unless

a. at the time such representation is made respondent has in its possession a reasonable basis, consisting of competent and reliable scientific documentation, to support such representation, and

b. respondent discloses in conjunction with any such representation that the existence of such causal relationship is disputed by qualified experts, unless respondent neither knows nor has reason to know that such dispute exists.

3. That use of any such product in place of table salt will result in a reduction of sodium intake to a level low enough to help save the lives of blacks or any other consumers.

4. That any such product may be used safely without prior physician approval.

5. That any such product tastes like table salt.

6. That use of any such product in place of table salt will result in a reduction of sodium intake to a level low enough to be in any way medically effective in the prevention or treatment of any disease or condition, including, but not limited to, cardiovascular disease or menstrual condition, unless at the time such representation is made respondent has in its possession a reasonable basis, consisting of competent and reliable scientific documentation, to support such representation.

B. Disseminating or causing the dissemination of any advertisement of any such product, unless respondent clearly and conspicuously discloses, with nothing to the contrary or in mitigation thereof, the following:

WARNING: BEFORE USING THIS PRODUCT, CONSULT
YOUR PHYSICIAN TO FIND OUT IF IT IS
NECESSARY OR SAFE FOR YOUR USE.
THIS PRODUCT SHOULD NOT BE USED BY
PERSONS ON A POTASSIUM-RESTRICTED
DIET.

II.

It is further ordered, That respondent Nagle, Spillman & Bergman, Inc., a corporation, its successors and assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of Adolph's salt substitute or any other food or drug, in or affecting commerce, as "food," "drug" and "commerce" are defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from making any representation orally, visually or in any other manner, directly or by implication:

A. As to the treatment prescribed by physicians for any medical condition or disease.

B. As to the cause, prevention or cure of any medical condition or disease, unless,

1. At the time such representation is made respondent has in its possession a reasonable basis, consisting of competent and reliable scientific documentation, to support such representation, and

2. Respondent discloses in conjunction with any such representation that the existence of such causal relationship or the efficacy of such preventive measures or cure is disputed by qualified experts, unless respondent neither knows nor has reason to know that such dispute exists.

C. As to the safety or efficacy of any such product, unless at the time such representation is made, respondent has in its possession a reasonable basis, consisting of competent and reliable scientific documentation, to support such representation.

D. The endorsement of such product by nutritionists or any other person, organization or association has been given without compensation when such is not the fact; or failing to disclose the fact of

compensation unless the endorser is an expert, or the endorser is known to a significant portion of the viewing public, or the compensation or promise of compensation was given subsequent to the giving of the endorsement.

E. Such product is endorsed by nutritionists or any other person, organization or association without disclosing that such nutritionist, other person, organization or association either in whole or in part owns or is owned by, or is employed by the advertiser, unless such is not the fact.

III.

It is further ordered, That respondent Nagle, Spillman & Bergman, Inc., a corporation, its successors and assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of salt substitute or any "food" or "drug," as those terms are defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Disseminating or causing to be disseminated by United States mail or by any means in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, any advertisement which contains a representation or testimonial prohibited by Paragraphs I or II of this order or which omits a disclosure for such product required by Paragraphs I and II of this order.

B. Disseminating or causing to be disseminated by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of any such product in or having an effect upon commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, any advertisement which contains a representation or testimonial prohibited by Paragraphs I and II of this order or which omits a disclosure for such product required by Paragraphs I and II of this order.

IV.

It is further ordered, That respondent shall distribute a copy of this order to each of its present and future officers, directors and operating divisions and that respondent secure from each such person and division a signed statement acknowledging receipt of this order.

V.

It is further ordered, That respondent maintain complete business

records relative to the manner and form of its continuing compliance with the terms and provisions of this order. Each record shall be retained by respondent for at least three years after it is made.

VI.

It is further ordered, That respondent notify the Commission at least thirty days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

VII.

It is further ordered, That respondent shall, within sixty days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with this order.

Complaint

88 F.T.C.

IN THE MATTER OF

E. & J. GALLO WINERY

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

Docket C-2836. Complaint, Aug. 26, 1976—Decision, Aug. 26, 1976

Consent order requiring a Modesto, Calif. winery, among other things to cease, for a ten-year period, establishing and maintaining exclusionary marketing policies and enforcing them through coercion of wholesalers. The order diminishes respondent's involvement in the operations of its wholesalers by limiting its ability to obtain financial information from its wholesalers and prohibits respondent from becoming involved in the financial obligations of such wholesalers. Further, respondent is prohibited from imposing certain conditions which could operate to the exclusion of competing wineries.

Appearances

For the Commission: *Rafe H. Cloe.*

For the respondent: *Elliot S. Kaplan, Robins, Davis & Lyons,*
Minneapolis, Minn.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporate respondent has violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45) by its various acts and practices described herein, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint and states its charges as follows:

I

DEFINITIONS

1. For purposes of this complaint, the following definitions apply.

A. Table wines are still (noneffervescent) wines. Their alcohol content is not over 14 percent by volume.

B. Dessert or sweet ("dessert") wines are still wines. Their alcohol content is over 14 percent but not over 24 percent by volume.

C. Sparkling wines are effervescent wines. Their alcohol content usually ranges from 10 to 14 percent by volume.

D. Wholesaler is a duly licensed person or entity (other than a governmental purchaser or an entity or division owned in whole or in part by respondent or any officer(s) or director(s) of respondent) authorized by respondent to sell or distribute its wines to others.