

IN THE MATTER OF
MORTON THIOKOL, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2707. Consent Order, July 21, 1975—Modifying Order, Feb. 28, 1983

This order reopens the proceeding and modifies the Commission's order issued on July 21, 1975 (86 F.T.C. 299). The modified order eases certain restrictions concerning the advertising of Lite Salt; gives the company more flexibility when making disclosures in advertising; and requires that Lite Salt labels state that it is "Not To Be Used By Persons On Sodium Or Potassium Restricted Diets Unless Approved By A Physician."

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On July 23, 1982, Morton-Norwich Products, Inc.¹ and Needham, Harper & Steers Advertising, Inc., respondents in the above-captioned matter, filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice to reopen the proceeding and modify the consent order entered on July 21, 1975.

The consent order involves Morton Lite Salt® Mixture (Lite Salt)², a blend of equal amounts of sodium chloride and potassium chloride, or any product of similar composition. Petitioners marketed Lite Salt for people who desire to or should limit their sodium intake. The order prohibits claims that medical research has established a connection between sodium intake and high blood pressure or water retention, and that a reduction in sodium intake would promote or maintain good health. The Complaint charged that these claims had not been established to the satisfaction of the scientific community. In addition, the order requires a warning in all Lite Salt advertisements that the product is "Not To Be Used By Persons On Sodium Or Potassium Restricted Diets Unless Approved By A Physician."

The petition of July 23, 1982, requests five changes in the consent order, which it summarized as follows:

(1) a change in the consent order's preamble to make clear that the order's advertising and labeling restrictions apply only to Morton's consumer-oriented promotional efforts and sales, rather than to the industrial food processing trade;

¹ Morton-Norwich, Inc., changed its name to Morton Thiokol, Inc., after it filed the petition.

² Petitioners requested a change in the preamble language substituting "Morton Lite Salt® Mixture" for "Morton Lite Salt" to protect their trademark. The Commission has no objection to the change.

(2) the inclusion of a requirement that packages be labeled, "Not To Be Used By Persons On Sodium Or Potassium Restricted Diets Unless Approved By A Physician";

(3) a change in the advertising disclosure provisions which allows Morton the option of using in its advertising the cautionary statement "Not To Be Used By Persons On Sodium Or Potassium Restricted Diets Unless Approved By A Physician" or the statement "Read Label, Including Warnings";

(4) a change in the advertising disclosure provisions which removes the phrase "clear and conspicuous" and substitutes more specific disclosure requirements for television, radio, and print advertisements; and

(5) a change in the second proscriptive paragraph of the consent order to make clear that the order does not prohibit Morton from stating accurately the opinions of medical researchers and doctors concerning the effects of sodium consumption, provided that such representations are based on reliable and competent scientific evidence.

The petition included a Proposed Order that petitioners requested the Commission to substitute for the original order.

The change requested in the preamble language would result in the order applying only to the advertising and sale of Lite Salt or any product of similar composition "in a package intended to be purchased and used by consumers (*e.g.*, the 11 ounce container sold in grocery stores) and not to the advertising and sale of the product in institutional packages (*e.g.*, 80 pound sacks sold to food processors)." Morton did not market the product in institutional size sacks in 1975.

The Commission agrees that this change is justified. As petitioners point out,

a food processor using the Product as an ingredient in its product would be sufficiently sophisticated to easily recognize that it should not be used in preparing a sodium-free or a potassium-free food. Moreover, food manufacturers are required to adhere to food labeling regulations as promulgated by the FDA, including regulations regarding the disclosure of ingredients in the order of predominance.

Petition at 17.

The second suggested change would add the following proscriptive paragraph to the modified order:

1. Failing to disclose on the label of such container, in the following words, or words of similar import, that such product is "Not To Be Used By Persons On Sodium or Potassium Restricted Diets Unless

Approved By A Physician." Such disclosure must be enclosed within a boxed outline and printed in type size that can clearly be read.

This provision is desirable because it requires, with minimal burden, the dissemination to interested consumers of important health information. Petitioners now include this warning on the product pursuant to an agreement reached with the Food and Drug Administration in 1974. Including this provision in the order gives the Commission clear authority to enforce the warning, and to ensure its prominence.

The third requested modification is that petitioners be allowed in advertising to substitute the warning "Read Label, Including Warnings" for the more extensive warning that the product is "Not To Be Used By Persons On Sodium or Potassium Restricted Diets Unless Approved By A Physician." Petitioners argue that so long as the more extensive warning appears in labeling, a requirement that it also appear in advertising is unnecessarily burdensome.

The Commission recognizes that all mandatory disclosures impose costs, occupy advertising space and compete with other useful information in advertisements—such as the benefits of the product—for consumers' attention. Consequently, disclosure requirements serve the public interest only if their benefits outweigh their costs and they are no more burdensome than necessary to convey the intended message. The Commission has concluded that if advertising for Lite Salt discloses that the product contains sodium, more extensive warnings are not necessary in advertising.³ The sodium content disclosure should be sufficient to alert consumers on sodium restricted diets to read the label of the product. There they will find a statement of the amount of sodium in the product, as well as the now required warning not to use the product without physician approval. The Commission does not believe it has a sufficient basis to require an advertising warning for this product directed only to persons on potassium restricted diets.

Accordingly, the Commission has modified the advertising disclosure requirement, with petitioners' agreement, to allow a disclosure of sodium content in lieu of the more extensive warning originally required.

Petitioners next ask the Commission to change the order's disclosure guidelines. The current order requires that disclosures be "clear and conspicuous." Petitioners' propose alternative definitions setting forth criteria for television, radio, and print advertising. Petitioners have agreed to modify the proposed television disclosure standards to

³ The Commission does not, however, accept petitioners' argument that it should alter the health warnings because of alleged competitive disadvantages they impose.

require audio disclosure. With this change, the Commission believes these standards will ensure that the required information is adequately communicated.

The final modification concerns the order provisions prohibiting petitioners from representing that medical researchers or doctors have established (a) a connection between sodium intake and high blood pressure or water retention, or (b) that reducing the level of sodium intake will promote or maintain good health. The petition cites extensive evidence indicating that the vast majority of medical and scientific experts in this country are sufficiently certain of a link between sodium consumption and the development of high blood pressure to recommend a reduction in sodium consumption for the general population. This represents a change from the state of medical and scientific opinion in 1975 when the order was issued. At that time, many doctors and researchers were not prepared to take a position on the existence of a link between sodium consumption and the development of high blood pressure, and reduced sodium consumption was not widely recommended for the general public. Because the situation has changed dramatically since 1975, however, the Commission believes the evidence contained in the petition justifies modifying the order. The evidence indicates, however, that most experts do not believe that the link between sodium consumption and the development of high blood pressure has been conclusively established. Consequently, the Commission has, with petitioners' agreement, modified the order to allow respondents to make representations about the relationship between sodium consumption and high blood pressure or water retention if they possess a reasonable basis consisting of competent and reliable scientific documentation supporting the representations.

The modified order also prohibits claims that Lite Salt is a sodium-free salt substitute or that it is intended for use by persons on sodium or potassium restricted diets unless approved by a physician.

For the foregoing reasons, the Commission believes petitioners have made a satisfactory showing that changes in facts and the public interest require modifying the order.

It is therefore ordered, That the proceeding is hereby reopened and the Decision and Order issued July 21, 1975, in Docket No. C-2707 is hereby modified to read as follows:

ORDER

It is ordered, That respondent Morton Thiokol, Inc., a corporation, and respondent Needham, Harper & Steers Advertising, Inc., a corporation, their successors and assigns, either jointly or individually, and

respondents' 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 in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, of Morton Lite Salt® Mixture or any product of similar composition, packed in a container intended to be sold to, distributed to, or used by consumers, do forthwith cease and desist from:

1. Failing to disclose on the label of such container, in the following words or words of similar import, that such product is "Not To Be Used By Persons On Sodium Or Potassium Restricted Diets Unless Approved By A Physician." Such disclosure must be enclosed within a boxed outline and printed in type size that can clearly be read.

2. Disseminating any advertising for such product packed in such container that fails to disclose:

- a. The following words, or words of similar import: "Not For Persons On Sodium Or Potassium Restricted Diets Unless Approved By A Physician"; or

- b. That such product contains sodium. This disclosure may be accomplished satisfactorily by describing such product as a mixture of salt (or sodium chloride) and potassium chloride or as containing one-half (1/2) the sodium of table salt.

For television advertisements, the required disclosure must be presented in the audio portions of the advertisement. The disclosure must be made in a manner such that it may be heard without undue distracting noise.

For print advertisements, the required disclosure must be of a type size that can clearly be read, and must appear enclosed in a boxed outline or otherwise appear prominently. If a coupon for such product is offered as part of any advertisement, the required disclosure need appear only in the main portion of the advertisement. If such product is advertised in conjunction with other products, the required disclosure need appear as part of or in close proximity to only that portion of the advertisement in which such product appears most prominently.

For radio advertisements, the required disclosure must be made in a manner such that it may be heard without undue distracting noise.

3. Making any representation, directly or indirectly, regarding the relationship between sodium consumption and high blood pressure or water retention unless, at the time the representation is made, respondents have in their possession a reasonable basis consisting of

competent and reliable scientific documentation to support such representation.

4. Making any representation, directly or indirectly, that Morton Lite Salt® Mixture is a sodium-free salt substitute.

5. Making any representation, directly or indirectly, that Morton Lite Salt® Mixture is intended for use by persons on sodium or potassium restricted diets, unless the representation is expressly limited to use approved by a physician.

Nothing in this order shall be construed to prohibit respondents from disseminating any advertisement of Morton Lite Salt® Mixture or any product of similar composition, that:

A. indicates that the product contains one-half the sodium of regular salt; or

B. indicates that the product is intended for persons (not including those on sodium or potassium restricted diets) who desire to reduce their intake of salt or sodium.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each officer or employee having direct responsibility for either the marketing or advertising of Morton Lite Salt® Mixture.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiary, or any other change in the corporation that may affect compliance obligations arising out of the order.

It is further ordered, That the foregoing modification shall become effective upon service of this order.

IN THE MATTER OF

NORTH AMERICAN PHILIPS CORPORATION

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12
OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3105. Complaint, March 7, 1983—Decision, March 7, 1983*

This consent order requires a New York City corporation, among other things, to cease misrepresenting that the Black Pro Shaver or any other drug or device will cure or minimize "razor bumps." The company is required to have a reasonable basis for representations relating to the efficacy, performance or benefit of any drug, device or other product; barred from making statements which are inconsistent with reliable scientific or medical evidence; and prohibited from misrepresenting the extent or results of product testing. The order also requires that the company maintain specific records for a period of three years and provide its sales and advertising personnel with a copy of the order.

Appearances

For the Commission: *Mitchell Paul* and *Grace Polk Stern*.

For the respondent: *William B. Gerwig*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that North American Philips Corporation and McCaffrey and McCall, Inc., hereinafter sometimes 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 North American Philips Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive office and principal place of business located at 100 East 42 Street, New York, New York.

PAR. 2. Respondent McCaffrey and McCall, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its executive office and principal place of business located at 575 Lexington Avenue, New York, New York.

PAR. 3. Respondent North American Philips Corporation is now, and for some time in the past has been, engaged in the manufacture,