

## IN THE MATTER OF

## NESTLE FOOD COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3365. Complaint, Jan. 21, 1992--Decision, Jan. 21, 1992*

This consent order prohibits, among other things, the California-based marketer of Carnation Coffee-mate Liquid from misrepresenting the amount of total fat, saturated fat, or cholesterol in Coffee-mate Liquid or any other milk product or non-dairy substitute, relative to the serving size depicted in its advertisements or promotional materials.

*Appearances*

For the Commission: *Anne V. Maher* and *C. Lee Peeler*.

For the respondent: *Sara Holtz* and *Randall Boyce*, San Francisco, CA.

## COMPLAINT

The Federal Trade Commission, having reason to believe that Nestle Food Company, formerly known as Carnation Company ("respondent"), has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent is a Delaware corporation with offices and principal place of business located at 800 North Brand Boulevard, Glendale, California.

PAR. 2. Respondent has advertised, offered for sale, sold and distributed food products, including Coffee-mate Liquid, a non-dairy liquid creamer. Coffee-mate Liquid is a "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Responsibility for advertising, sale and distribution of Coffee-mate

Liquid has been transferred to Nestle Beverage Company. Both respondent and Nestle Beverage Company are wholly owned subsidiaries of Nestle Holdings, Inc.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for Coffee-mate Liquid, including but not necessarily limited to the advertisements attached as Exhibits A and B. Specifically, the aforesaid advertisements contain the following statements and depictions:

a. Enjoy the rich, creamy taste of new Coffee-mate Liquid in more than just coffee. Try it on fruit, cereal, or in your favorite recipe. It's low in fat, lactose-free, and has no cholesterol. [Depiction of carton of Coffee-mate Liquid, a cup of coffee, a bowl of cereal, and a bowl of fruit.] (Exhibit A).

b. I like rich, creamy tasting things, but I also like to stay away from cholesterol and saturated fat. I found a smart new way to do both. New Coffeemate Liquid non-dairy creamer. All the rich, creamy taste of half & half but 75% less saturated fat and no cholesterol. In coffee, over fruit and cereal, Coffee-mate Liquid is a smart new way to have the taste you like without the fat and cholesterol you don't. [Depiction of Coffee-mate Liquid being poured first over bowl of fruit and cereal, then into a cup of coffee, and then again over a bowl of fruit.] (Exhibit B).

PAR. 5. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication, that Coffee-mate Liquid is a low-fat product when consumed in an amount normal for use on cereal, on fruit or in cooking.

PAR. 6. In truth and in fact, Coffee-mate Liquid is not a low-fat product when consumed in an amount normal for use on cereal, on fruit or in cooking. Therefore, the representation as set forth in paragraph five was and is false and misleading.

PAR. 7. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by

implication, that Coffee-mate Liquid is lower in fat than other foods, such as whole milk or low-fat (2%) milk, for which it would be a substitute when used on cereal, on fruit or in cooking.

PAR. 8. In truth and in fact, Coffee-mate Liquid is not lower in fat than other foods, such as whole milk or low-fat (2%) milk, for which it would be a substitute when used on cereal, on fruit or in cooking. A one-half cup serving of Coffee-mate Liquid has 8.5 grams of fat, which represents nearly twice the amount of fat in a one-half cup serving of whole milk (4.4 grams) and nearly four times the amount of fat in a one-half cup serving of low-fat (2%) milk (2.3 grams). Therefore, the representation as set forth in paragraph seven was and is false and misleading.

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

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation into certain acts and practices of the respondent named in the caption hereof, and the respondent and Nestle Beverage Company, both of which are wholly owned subsidiaries of Nestle Holdings, Inc., having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection 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, Nestle Beverage Company and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent and Nestle Beverage Company 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 or Nestle Beverage Company that the law has been

violated as alleged in such complaint, and waivers of 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 (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 statement and enters the following order:

1. Respondent Nestle Food Company is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with offices and its principal place of business located at 800 North Brand Boulevard, Glendale, California.

Nestle Beverage Company is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with offices and its principal place of business located at 345 Spear Street, San Francisco, California.

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

#### ORDER

#### DEFINITIONS

For purposes of this order, the term "*milk product*" shall mean any product for which a federal standard of identity has been established under 21 CFR 131 as currently in effect as of the date of this order.

For purposes of this order, the term "*non-dairy substitute*" shall mean any product which is commonly used as a substitute for a milk product which, for purposes of this order, shall include but not be limited to any non-dairy creamer.

## I.

*It is ordered*, That Nestle Food Company, formerly known as Carnation Company, and Nestle Beverage Company (collectively "the companies"), their successors and assigns, and their 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 any food, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, through numerical or descriptive terms or any other means, the absolute or comparative amount of total fat, saturated fat or cholesterol in any milk product or any non-dairy substitute; and

B. Misrepresenting in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of total fat, saturated fat or cholesterol in any milk product or non-dairy substitute relative to the serving size or amount customarily consumed for any particular use being advertised or promoted.

*Provided, however*, that nothing in provisions A and B above shall prohibit any representation as to the amount of total fat, saturated fat or cholesterol in any milk product or non-dairy substitute if such representation is specifically permitted in labeling, for the serving size advertised or promoted for such product, by regulations promulgated by the U.S. Food and Drug Administration pursuant to the Federal Food, Drug and Cosmetic Act.

## II.

This order shall not apply to an unaffiliated purchaser of the assets of the dairy currently owned by Nestle Food Company and located in Phoenix, Arizona, provided that the sale of such dairy's assets are conducted in a manner consistent in all material respects with the description and terms of that sale as set forth in the attached

letter, dated October 16, 1991, from Nestle Food Company to Federal Trade Commission staff, and provided further that Nestle Food Company shall remain responsible under the terms of this order for any representation made, as covered by Part I of this order, for any milk product or non-dairy substitute marketed under a trademark of Nestle Food Company.

### III.

*It is further ordered,* That for three (3) years after the last date of dissemination of the representation, the companies, or their successors and assigns, shall maintain and, upon request, make available to the Federal Trade Commission for inspection and copying copies of:

A. All materials that were relied upon by the companies in disseminating any representation covered by this order; and

B. All test reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question any representation that is covered by this order.

### IV.

*It is further ordered,* That the companies shall notify the Commission at least thirty (30) days prior to any proposed change in the companies, 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 companies which may affect compliance obligations arising out of this order.

### V.

*It is further ordered,* That the companies shall, within thirty (30) days after service upon them of this order, distribute a copy of this order to each of their operating divisions, to each of their managerial employees, and to each of their officers, agents, representatives, or employees engaged in the preparation or placement of advertising or other material covered by this order.

## VI.

*It is further ordered,* That the companies shall, within sixty (60) days after service of this order and at such other times as the 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.

## ATTACHMENT

NESTLE USA, INC.

October 16, 1991

Michelle Rusk, Esq.  
Anne Maher, Esq.  
Federal Trade Commission  
Washington, D.C. 20680

Dear Ms. Rusk and Ms. Maher:

I am representing Nestle Food Company in the sale of the assets of its Phoenix dairy operation. The following is some information about the proposed sale of the dairy which we believe is relevant to excluding it from the proposed order.

First, and perhaps most importantly, Nestle Food Company is only selling assets of the dairy located in Phoenix, Arizona to an unaffiliated entity. Those assets are valued at less the 1% of the total value of the Nestle Food Company.

Secondly, to assist in promoting a smooth transition of the sale of the assets by the Nestle Food Company to the unaffiliated entity, Nestle Food Company will be licensing the new owner to use certain of its trademarks for a limited period of time. Under the terms of the trademark license, Nestle will have the ability to reasonably control the labeling and advertising of products that display a Nestle trademark.

Thirdly, the dairy operation is a regional stand-alone business. It manufactures milk, sour cream, cottage cheese and the like. The dairy does not manufacture any of the products promoted in the alleged violative advertising.

Fourthly, while a minority of the shareholders of the proposed purchaser include a present and a former Carnation employee, none of the shareholders had any responsibility or involvement in the alleged violative advertising.

Lastly, we wish to stress that the sale of the assets of the dairy is purely the result of a business decision by Nestle Food Company to discontinue its involvement with this type of business operation, and is not motivated in any way by an attempt to circumvent the order.

Yours very truly,

/S/

Mark Evans

**New Carnation Coffee-mate Liquid**

**Pour on the flavor and save 80¢.**

Enjoy the rich, creamy taste of new Coffee-mate Liquid in more than just coffee. Try it on fruit, cereal, or in your favorite recipe. It's low in fat, lactose-free, and has no cholesterol.

**NEW**  
NO CHOLESTEROL  
LOW IN SATURATED FAT  
100% LACTOSE FREE

**Carnation.**  
**Coffee-mate**  
LIQUID  
NON-DAIRY CREAMER

**NEW**  
Use in coffee, cereals, fruits, desserts and cooking.

**30¢** **save 30¢**  
on one 16-oz carton of Coffee-mate Liquid non-dairy creamer only

**50¢** **save 50¢**  
on one 32-oz carton of Coffee-mate Liquid non-dairy creamer only

IN THE DAIRY CASE

Decision and Order

115 F.T.C.

## EXHIBIT B

# CARNATION COFFEE-MATE LIQUID

## "SMART WAY"

CLIENT: Carnation Company  
COMMERCIAL NO.: CMCM 9023

EXHIBIT B

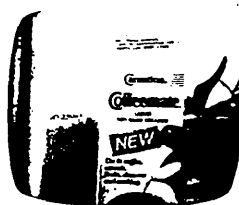
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WOMAN: I like rich, creamy tasting things



But I also like to stay away



from cholesterol



and saturated fat



I found a smart new way to do both



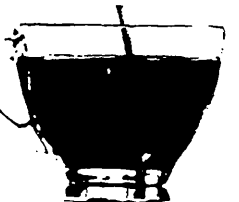
New Coffee-mate Liquid non-dairy creamer



All the rich, creamy taste of half & half



but 75% less saturated fat and no cholesterol



in coffee



over fruit or cereal



Coffee-mate Liquid is a smart new way to have the taste you like without the fat and cholesterol you don't



ANNOUNCER: Rich, creamy and smart. New Coffee-mate Liquid from Carnation in your grocer's dairy case

## IN THE MATTER OF

## ST. IVES LABORATORIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS.  
5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3366. Complaint, Jan. 24, 1992--Decision, Jan. 24, 1992*

This consent order prohibits, among other things, a California company from representing that its skin cream or any other non-prescription skin cream is, contains, or has the same wrinkle-removing effect as the prescription drug tretinoin or from representing that its cosmetic products are, contain, or have the same effect as another manufacturer's prescription drug. Respondent also is prohibited from representing that its skin product is new or that it helps reduce the visible signs of aging. In addition, respondent is required to pay \$100,000 to be deposited into the United States Treasury.

*Appearances*

For the Commission: *Pamela J. Wood.*

For the respondent: *James B. Swire, Townley & Updike, New York, N.Y.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that St. Ives Laboratories, Inc., a corporation, ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent St. Ives Laboratories, Inc. is a Delaware corporation, with its office or principal place of business located at 8944 Mason Avenue, Chatsworth, California.

PAR. 2. The acts and practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 3. Respondent has advertised, offered for sale, sold or distributed health and beauty aids and cosmetics, including a skin care product known at different times as "Retinyl-A" or "St. Ives A® Retinyl Palmitate Treatment Cream" ("St. Ives A® skin cream").