

IN THE MATTER OF  
CAMPBELL SOUP COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

*Docket 9223. Complaint, January 25, 1989--Decision, August 18, 1992*

This consent order requires, among other things, a New Jersey-based company to disclose in future advertisements that directly or by implication mention heart disease -- in connection with soups containing significant amounts of sodium -- both the sodium content of a serving of such soup and the recommended maximum daily limit on sodium intake. Respondent also is prohibited from representing a connection between any soup and a reduction in the risk of heart disease, unless such representations are substantiated by competent and reliable scientific or medical evidence.

*Appearances*

For the Commission: *Lee Peeler* and *Nancy S. Warden*.

For the respondent: *S. William Livingston, Sandra L. Spear* and *Eugene I. Lambert, Covington & Burling, Washington, D.C.*

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 Campbell Soup Company, a corporation, ("Campbell" or "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. Campbell is a New Jersey corporation, with its offices and principal place of business located at Campbell Place, Camden, New Jersey.

PAR. 2. Campbell produces, advertises, offers for sale, sells, and distributes canned soup products, which are foods as the term "food" is defined in Section 15 (b) of the Federal Trade Commission Act.

PAR. 3. Advertisements for Campbell's canned soup products have been disseminated by various means in or affecting commerce, including magazines distributed across state lines for the purpose of inducing the purchase of Campbell's soups by members of the public.

PAR. 4. The acts and practices alleged in this complaint constitute the maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business, and for the purpose of promoting the sale and distribution of its soups, respondent, as part of its "Soup is Good Food" advertising campaign, has disseminated, or caused the dissemination of, in a variety of national magazines an advertisement entitled "What's at the bottom of a bowl of Campbell's soup?," a copy of which is attached as Exhibit A.

PAR. 6. The advertisement described in paragraph five above contains the following statements, with emphasis in the original:

Did you know that most of Campbell's Soups are low in fat and cholesterol? For example, a serving of regular Chicken Noodle, or new Special Request with one-third less salt, is low in fat and has just 15 milligrams of cholesterol. And that's especially good to know, because research tells us that a diet low in fat and cholesterol may help reduce the risk of some forms of heart disease.

PAR. 7. In the advertisement described in paragraph five above, respondent has represented, and now represents, either directly or by implication, that:

a. Most of Campbell's soups are low in fat and cholesterol and, as part of a diet low in fat and cholesterol, may help reduce the risk of some forms of heart disease.

b. Campbell's Chicken Noodle is low in fat and has just 15 milligrams of cholesterol and, as part of a diet low in fat and cholesterol, may help reduce the risk of some forms of heart disease.

PAR. 8. In the advertisement described in paragraph five above respondent has failed to disclose that Campbell's soups are high in sodium and that diets high in sodium may increase the risk of heart disease. In light of the representations made these facts would be material to consumers in deciding to purchase Campbell's soups and the failure to disclose these facts is deceptive.

PAR. 9. In the advertisement described in paragraph five above, respondent has represented, and now represents, either directly or by implication, that most of its soups make a positive contribution to a diet that reduces the risk of heart disease.

PAR. 10. In the advertisement described in paragraph five above respondent represented and now represents that it possessed and relied on a reasonable basis for the representation set forth in paragraph nine at the time such representation was made.

PAR. 11. In truth and in fact, respondent did not possess and rely upon a reasonable basis for the representation set forth in paragraph nine at the time such representation was made. Therefore, the representation set forth in paragraph ten was and is false, misleading, or deceptive.

PAR. 12. Respondent's dissemination of the false and misleading representations as alleged in this complaint constitutes unfair or deceptive acts or practices in or affecting commerce in violation of Sections 5 (a) and 12 of the Federal Trade Commission Act.

Commissioner Machol not participating.

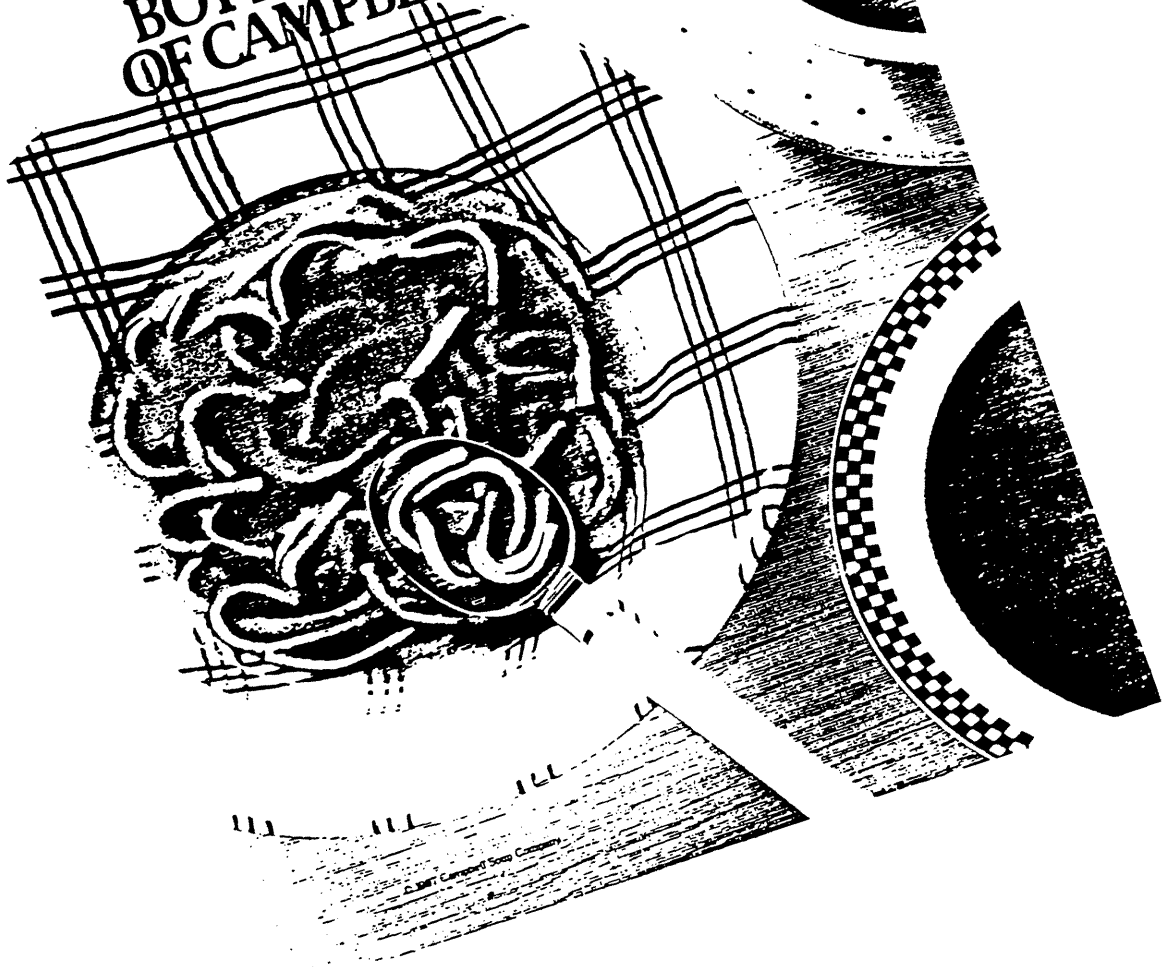
CAMPBELL SOUP COMPANY

Complaint

EXHIBIT A

EXHIBIT A

WHAT'S AT THE  
BOTTOM OF A BOWL  
OF CAMPBELL'S SOUP?



Complaint

115 F.T.C.

There's a lot that's good for you at the bottom of a bowl of Campbell's Soup. And since eating right is just as important as exercise when it comes to looking and feeling better, why not stir up a bowl today?

### FIBER.

When most people think of fiber, they automatically think of bran cereal. But you can also think of soup. Because some Campbell's Soups are a delicious source of fiber. In fact, a serving of one of our Bean or Pea Soups has as much fiber as a serving of many bran cereals. They're low in fat, too. Which is good news, since the National Cancer Institute says that a diet high in fiber and low in fat may help reduce the risk of some kinds of cancer.



### LOW FAT and LOW CHOLESTEROL.

Did you know that most of Campbell's Soups are low in fat and cholesterol? For example, a serving of regular Chicken Noodle, or new Special Request, with one-third less salt, is low in fat and has just 15 milligrams of cholesterol. And that's especially good to know, because research tells us that a diet low in fat and cholesterol may help reduce the risk of some forms of heart disease.



### CALCIUM.

When you prepare a can of Campbell's Tomato, Cream of Mushroom or Cream of Celery Soup with a full can of milk, you have more than just a delicious cream soup. You have a delicious source of calcium. In fact, one serving provides you with 10% of your daily requirement. And that's good for your body. Because calcium helps keep your bones and teeth strong.



AT THE BOTTOM OF IT ALL  
SOUP IS GOOD FOOD.

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## DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Campbell Soup Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at Campbell Place, in the City of Camden, State of New Jersey.

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

## DEFINITIONS

For purposes of Part I, the term "*sodium disclosure amount*" shall mean:

1. 500 milligrams of sodium per eight ounce serving prior to the effective date of final regulations of the Food and Drug Administration implementing Section 403(r)(1) of the Federal Food, Drug, and Cosmetic Act, as amended by the Nutrition Labeling and Education Act of 1990; or
2. The disqualifying nutrient level of sodium per serving size or per 100 grams upon the effective date of final regulations of the Food and Drug Administration implementing Section 403(r)(1) of the Federal Food Drug and Cosmetic Act, as amended by the Nutrition Labeling and Education Act of 1990.

For purposes of Part I, the term "*recommended maximum daily limit of sodium intake*" shall mean:

- i. The daily reference value or other daily intake limit established in an effective final regulation of the Food and Drug Administration; or
- ii. In the absence of such a regulation, the daily intake limit of sodium advised by any one of the following three organizations: the National Academy of Sciences; the Surgeon General of the Public Health Service; and the American Heart Association.

## I.

*It is ordered,* That Campbell Soup Company, a corporation, ("Campbell" or "respondent") its successors and assigns, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of any soup that contains more than the sodium disclosure amount, as defined above, in "commerce" as defined in the Federal Trade Commission Act, do forthwith cease and

desist in any advertisement that directly or by implication mentions heart disease in connection with the soup from failing to notify consumers of:

A. The sodium content of a serving of such soup in terms of the number of milligrams; and

B. The recommended maximum daily limit of sodium intake in terms of number of milligrams and the recommending organization.

For purposes of this Part, the statements required by subparagraphs A and B must appear in close proximity. In the event that the Food and Drug Administration does not have a final effective regulation as described in subparagraph (i) above and none of the three named organizations named in subparagraph (ii) above advises that daily sodium intake be limited to a specific maximum amount, subparagraph B of this Part shall not apply. *Provided, however*, that this Part shall not be deemed to apply to any representation approved for labeling (a) by applicable final regulations of the Food and Drug Administration implementing Section 403(r)(1) of the Federal Food, Drug, and Cosmetic Act, as amended by the Nutrition Labeling and Education Act of 1990, or (b) by the United States Department of Agriculture pursuant to, if applicable, Section 7 of the Federal Meat Inspection Act, as amended, or Section 8 of the Poultry Products Inspection Act, as amended.

## II.

*It is further ordered*, That respondent in connection with the advertising, offering for sale, sale, or distribution of any soup in or affecting commerce, as the term "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication that there is a connection between soup or its composition and a reduction in the risk of heart disease, unless at the time of the dissemination of any such representation, respondent produces and relies upon a reasonable basis for the connection represented, consisting of competent and reliable scientific or medical evidence. *Provided, however*, that any such representation approved for labeling of any such soup (a) by

applicable final regulations of the Food and Drug Administration implementing Section 403(r)(1) of the Federal Food, Drug, and Cosmetic Act, as amended by the Nutrition Labeling and Education Act of 1990, or (b) by the United States Department of Agriculture pursuant to, if applicable, Section 7 of the Federal Meat Inspection Act, as amended, or Section 8 of the Poultry Products Inspection Act, as amended, will be deemed to have a reasonable basis as required by this Part.

### III.

*It is further ordered,* That respondent shall distribute a copy of this order to each of its operating divisions and officers, agents, representatives, or employees engaged in the preparation and placement of advertisements or other such sale materials for any soup product.

### IV.

*It is further ordered,* That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporation which may affect compliance obligations arising out of this order, such as its dissolution, assignment, or sale, resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries engaged in the advertising, offering for sale, sale or distribution of any soup product.

### V.

*It is further ordered,* That respondent, within sixty (60) days after this order becomes final, shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order.

## SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I have voted to accept the settlement with the Campbell Soup Company and to issue the final consent order as modified from the version proposed for public comment. Although I would have preferred that the order, which applies to the advertising and marketing of soup, apply to a broader range of products, I accept the limitation to soup in the interest of settling the case. The proposed order may not apply expressly to Campbell food products other than soup, but it puts Campbell on notice that the Commission might consider claims similar to those challenged in this case deceptive for other food products as well. In other respects, the order has been improved to help cure the deception alleged in the Commission's complaint without unnecessarily restricting the communication of truthful information.

Although we do not have conclusive evidence on the question, the comments we received on the order as originally proposed lend weight to the view that when the order triggers a disclosure requirement regarding sodium content in soup, simply disclosing the number of milligrams of sodium the soup contains might not provide enough information for consumers to put the claim in context from a dietary standpoint. We have now added a requirement that when the sodium content disclosure is triggered by the order, Campbell must also disclose the recommended maximum daily sodium intake. This requirement is appropriate because it will provide consumers with the information necessary to decide if the sodium content of the soup is consistent with their dietary goals, yet it is not unnecessarily pejorative and should not discourage truthful and useful fat and cholesterol claims. I also support the other changes in the order because they have been made to promote consistency with the Nutrition Labeling and Education Act as currently read by the Food and Drug Administration.

## IN THE MATTER OF

## NME HOSPITALS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3397. Complaint, Aug. 24, 1992--Decision, Aug. 24, 1992*

This consent order prohibits, among other things, the California-based hospital chain from misrepresenting the comparative efficacy, permanence, or likely complications of any reconstructive surgical procedure, and requires that the respondent base future claims about the efficacy, permanence, or likely complications of any surgical procedure used in the treatment of bowel-related diseases on competent and reliable scientific evidence that substantiates any such representation.

*Appearances*

For the Commission: *Michael A. Katz* and *Matthew Daynard*.

For the respondent: *John A. Meyers*, in-house counsel, Santa Monica, CA.

## COMPLAINT

The Federal Trade Commission, having reason to believe that NME Hospitals, Inc., d/b/a Continent Ostomy Center ("NME Hospitals"), a corporation, hereinafter referred to as respondent or proposed respondent, has violated Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(a), and that an action by it is in the public interest, issues this complaint and alleges that:

PARAGRAPH 1. Respondent NME Hospitals is a Delaware corporation with its principal office and place of business located at 2700 Colorado Avenue, Santa Monica, California. NME Hospitals owns and operates numerous hospitals, the following five of which contain individual Continent Ostomy Centers: