

Complaint

119 F.T.C.

IN THE MATTER OF

HÄAGEN-DAZS COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3582. Complaint, June 2, 1995--Decision, June 2, 1995*

This consent order prohibits, among other things, a New Jersey-based ice cream and frozen yogurt corporation from misrepresenting the existence or amount of fat, saturated fat, cholesterol, or calorie content of any of its frozen food products in the future, and requires the respondent to meet the Food and Drug Administration qualifying amount for any nutrient-content claim.

Appearances

For the Commission: *Anne V. Maher* and *Michelle K. Rusk*.

For the respondent: *Basil Culyba* and *Kirsten Wolfe*, *Howrey & Simon*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Häagen-Dazs Company, Inc., a corporation ("Häagen-Dazs" 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. Respondent Häagen-Dazs is a New Jersey corporation, with its principal office or place of business at Glenpointe Centre East, Teaneck, NJ.

PAR. 2. Respondent has manufactured, advertised, labeled, offered for sale, sold and distributed Häagen-Dazs Frozen Yogurt, a "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for Häagen-Dazs Frozen Yogurt, including but not necessarily limited to the attached Exhibits 1-3. These advertisements contain the following statements and depictions:

A. [In a 70-point type headline:]

WHY IS HÄAGEN-DAZS®
FROZEN YOGURT
BETTER THAN YOUR
FIRST TRUE LOVE?

[Depiction of "Honeymooners"]

HÄAGEN-DAZS IS STILL
98% FAT FREE*.

[In 15-point text below the headline:]

Imagine pineapple sorbet tantalizingly wrapped around a coconut frozen yogurt bar. And now imagine that this bar has 100 calories. Or imagine a pint of vanilla frozen yogurt swirled with heavenly raspberry sorbet. And that these and all the rest of our irresistible frozen yogurt and sorbet combinations are 98% fat free. But they're still totally Häagen-Dazs.

What could be better?

[Depiction of frozen yogurt carton container and box of frozen yogurt bars]

[In 8-point type at the bottom right side of the page:]

* frozen yogurt and sorbet combinations

(Exhibit 1)

B. [In a 70-point type headline:]

WHY IS HÄAGEN-DAZS
FROZEN YOGURT
BETTER THAN YOUR
FIRST TRUE LOVE?

[Depiction of "Honeymooners"]

HÄAGEN-DAZS IS STILL
98% FAT FREE*.

[In 20-point text below the headline:]

Try new Raspberry Rendezvous™ and Orange Tango™ Frozen Yogurt. Both are 98% fat free and still totally Häagen-Dazs.

[Depiction of frozen yogurt carton container]

[In 8-point type at the bottom right side of the page:]

*frozen yogurt and sorbet combinations

(Exhibit 2)

C. [In a 110-point type headline:]

NOW DISAPPEARING AT A STORE NEAR YOU.

[Depiction of frozen yogurt bar]

[In 15-point text below the headline:]

Take a good look. This is what a Häagen-Dazs Frozen Yogurt bar looks like. We thought we'd point that out, just in case you have some trouble finding them in your store. Because it seems that people are demanding them faster

than we can supply them. Not that we're really surprised. After all, we're the ones who made them so irresistible in the first place -- with flavors like Raspberry & Vanilla, Peach, Strawberry Daiquiri and Piña Colada. And each with just 1 gram of fat and 100 calories. So now that you know what they look like -- go ahead and try one. And you'll find out for yourself just how quickly they can disappear.

(Exhibit 3)

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 1 and 2, respondent has represented, directly or by implication, that Häagen-Dazs Frozen Yogurt is 98 percent fat free.

PAR. 6. In truth and in fact, in most cases Häagen-Dazs Frozen Yogurt is not 98 percent fat free. Seven of the nine Häagen-Dazs Frozen Yogurt flavors sold in cartons and three of the eight Häagen-Dazs Frozen Yogurt Bar flavors contained more than two percent fat content at the time of dissemination of the advertisements referred to in paragraph four. Therefore, the representation 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 1 and 2, respondent has represented, directly or by implication, that Häagen-Dazs Frozen Yogurt is low fat.

PAR. 8. In truth and in fact, in most cases Häagen-Dazs Frozen Yogurt is not low fat. Three of the nine Häagen-Dazs Frozen Yogurt flavors sold in cartons and three of the eight Häagen-Dazs Frozen Yogurt Bar flavors contained from eight to twelve grams of fat per serving at the time of dissemination of the advertisements referred to in paragraph four. In addition, four of the nine Häagen-Dazs Frozen Yogurt flavors sold in cartons contained from four to six grams of fat per serving. Therefore, the representation set forth in paragraph seven was, and is, false and misleading.

PAR. 9. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit 3, respondent has represented, directly or by implication, that Häagen-Dazs Frozen Yogurt Bars contain one gram of fat per serving.

PAR. 10. In truth and in fact, in many cases Häagen-Dazs Frozen Yogurt Bars contain more than one gram of fat per serving. Three of the eight Häagen-Dazs Frozen Yogurt Bar flavors contained from eleven to twelve grams of fat per serving at the time of dissemination of the advertisements referred to in paragraph four. Therefore, the representation set forth in paragraph nine was, and is, false and misleading.

PAR. 11. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit 3, respondent has represents directly or by implication, that Häagen-Dazs Frozen Yogurt Bars are low fat.

PAR. 12. In truth and in fact, in many cases Häagen-Dazs Frozen Yogurt Bars are not low fat. Three of the eight Häagen-Dazs Frozen Yogurt Bar flavors contained from eleven to twelve grams of fat per serving at the time of dissemination of the advertisements referred to in paragraph four. Therefore, the representation set forth in paragraph eleven was, and is, false and misleading.

PAR. 13. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisement attached as Exhibit 3, respondent has represented, directly or by implication, that Häagen-Dazs Frozen Yogurt Bars contain 100 calories per serving.

PAR. 14. In truth and in fact, in many cases Häagen-Dazs Frozen Yogurt Bars contain more than 100 calories per serving. Three of the eight Häagen-Dazs Frozen Yogurt Bar flavors contained from 210 to 230 calories per serving at the time of dissemination of the advertisements referred to in paragraph four. Therefore, the representation set forth in paragraph thirteen was, and is, false and misleading.

PAR. 15. The acts and practices of the respondent as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Chairman Pitofsky not participating.

WHY IS HÄAGEN-DAZS[®] FROZEN YOGURT BETTER THAN YOUR FIRST TRUE LOVE?



HÄAGEN-DAZS IS STILL 98% FAT FREE.*

Imagine pineapple sorbet tantalizingly wrapped around a coconut frozen yogurt bar. And now imagine that this bar has 100 calories. Or imagine a pint of vanilla frozen yogurt swirled with heavenly raspberry sorbet. And that these and all the rest of our irresistible frozen yogurt and sorbet combinations are 98% fat free. But they're still totally Häagen-Dazs.

What could be better?

HÄAGEN-DAZS. IT'S BETTER THAN ANYTHING.™



*frozen yogurt and sorbet combinations

EXHIBIT 2

WHY IS HÄAGEN-DAZS® FROZEN YOGURT BETTER THAN YOUR FIRST TRUE LOVE?



HÄAGEN-DAZS IS STILL 98% FAT FREE.*

©1993 The Häagen-Dazs Company, Inc.

COUPON EXPIRES 12/31/93

SAVE \$1.00

ON ANY FLAVOR
HÄAGEN-DAZS® FROZEN YOGURT PINTS

18023



7457038100

VOID

This certificate is redeemable at grocery/
convenience stores or at participating Häagen-Dazs Ice Cream Shops



Try new Raspberry
Rendezvous® and Orange
Tango® Frozen Yogurt. Both
are 98% fat free and still
totally Häagen-Dazs.

**HÄAGEN-DAZS.
IT'S BETTER THAN ANYTHING.™**

*Frozen yogurt and sorbet combinations

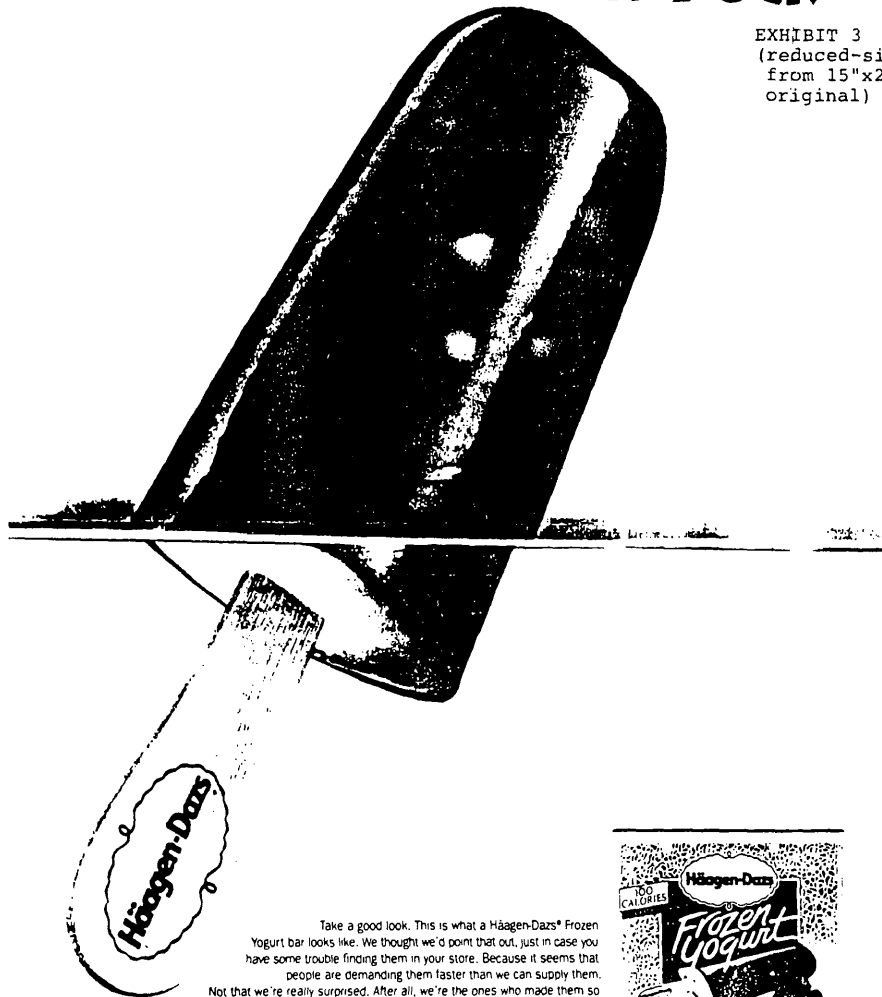
Complaint

119 F.T.C.

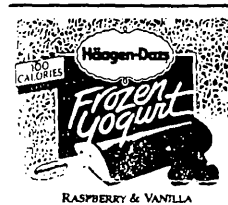
EXHIBIT 3

NOW DISAPPEARING AT A STORE NEAR YOU.

EXHIBIT 3
(reduced-size
from 15"x25"
original)



Take a good look. This is what a Häagen-Dazs® Frozen Yogurt bar looks like. We thought we'd point that out, just in case you have some trouble finding them in your store. Because it seems that people are demanding them faster than we can supply them. Not that we're really surprised. After all, we're the ones who made them so irresistible in the first place—with flavors like Raspberry & Vanilla, Peach & Strawberry Cheesecake, and Piña Colada. And each with just 1 gram of fat and 100 calories. So now that you know what they look like—go ahead and try one. And you'll find out for yourself just how quickly they can disappear.



HÄAGEN-DAZS® IT'S BETTER THAN ANYTHING.™

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 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 violations 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 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 (60) days, and having duly considered the comment filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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:

1. Respondent Häagen-Dazs Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at Glenpointe Centre East, Teaneck, NJ.

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

I.

It is ordered, That respondent Häagen-Dazs Company, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any frozen food product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of fat, saturated fat, cholesterol or calories in any such product. If any representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

II.

Nothing in this order shall prohibit respondent from making any representation that is specifically permitted in labeling for any frozen food product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

III.

It is further ordered, That for three (3) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of:

1. All materials that were relied upon in disseminating such representation; and

2. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, including complaints from consumers.

IV

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

V

It is further ordered, That respondent shall, within thirty (30) days after service of this order, distribute a copy of, this order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertisements or other materials covered by this order.

VI.

It is further ordered, That respondent 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 it has complied with this order.

Chairman Pitofsky not participating.

Complaint

119 F.T.C.

IN THE MATTER OF

LA ASOCIACIÓN MÉDICA DE PUERTO RICO, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3583. Complaint, June 2, 1995--Decision, June 2, 1995*

This consent order prohibits, among other things, the Medical Association, the Psychiatry Section, and the two doctors from encouraging, organizing or entering into: any boycott or refusal to deal with any third-party payer; or any agreement to refuse to provide services to patients covered by any third-party payer. In addition, the consent order prohibits, for five years, the respondents from soliciting information from psychiatrists regarding their decisions whether to participate in agreements with insurers and provide service; from passing such information along to other doctors; and from giving psychiatrists advice about making those decisions.

Appearances

For the Commission: *Alan B. Loughman* and *Alice Au*.

For the respondents: *Demitrio Fernandez*, Rio Piedras, Puerto Rico. *Roberto Boneta*, *Muno*, *Boneta*, *Gonzalez*, *Arbona*, *Benitez & Peral*, Hato Rey, Puerto Rico.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by the Act, the Federal Trade Commission, having reason to believe that La Asociación Médica de Puerto Rico; La Sección de Fisiatría de la Asociación Médica de Puerto Rico; Rafael L. Oms, individually and as an officer of La Sección de Fisiatría de la Asociación Médica de Puerto Rico; and Rafael E. Seín, individually and as an officer of La Sección de Fisiatría de la Asociación Médica de Puerto Rico, 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: