

## IN THE MATTER OF

## BBDO WORLDWIDE, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3637. Complaint, Jan. 24, 1996--Decision, Jan. 24, 1996*

This consent order prohibits, among other things, a New York advertising firm from misrepresenting the amount of fat, calories, or cholesterol in any frozen yogurt, any frozen sorbet, and most ice cream products. This action stems from the firm's role in developing certain advertisements for Häagen-Dazs frozen yogurt products.

*Appearances*

For the Commission: *Anne V. Maher.*

For the respondent: *Pro se.*

## COMPLAINT

The Federal Trade Commission, having reason to believe that BBDO Worldwide, 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 BBDO Worldwide, Inc. is a New York corporation, with its principal office or place of business at 1285 Avenue of the Americas, New York, NY.

PAR. 2. Respondent, at all times relevant to this complaint, was an advertising agency of Häagen-Dazs Company, Inc., and prepared and disseminated advertisements to promote the sale of 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% fat free.

PAR. 6. In truth and if fact, in most cases Häagen-Dazs Frozen Yogurt is not 98% 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 if 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 represented, 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. Respondent knew or should have known that the representations set forth in paragraphs five, seven, nine, eleven and thirteen were, and are, false and misleading.

PAR. 16. 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.

## EXHIBIT 1

EXHIBIT 1

# 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

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EXHIBIT 2

EXHIBIT 2

# WHY IS HÄAGEN-DAZS<sup>®</sup> FROZEN YOGURT BETTER THAN YOUR FIRST TRUE LOVE?



## HÄAGEN-DAZS IS STILL 98% FAT FREE.

COUPON EXPIRES 12/31/93

**SAVE \$1.00**ON ANY FLAVOR  
HÄAGEN-DAZS<sup>®</sup> FROZEN YOGURT PINTS

18023

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

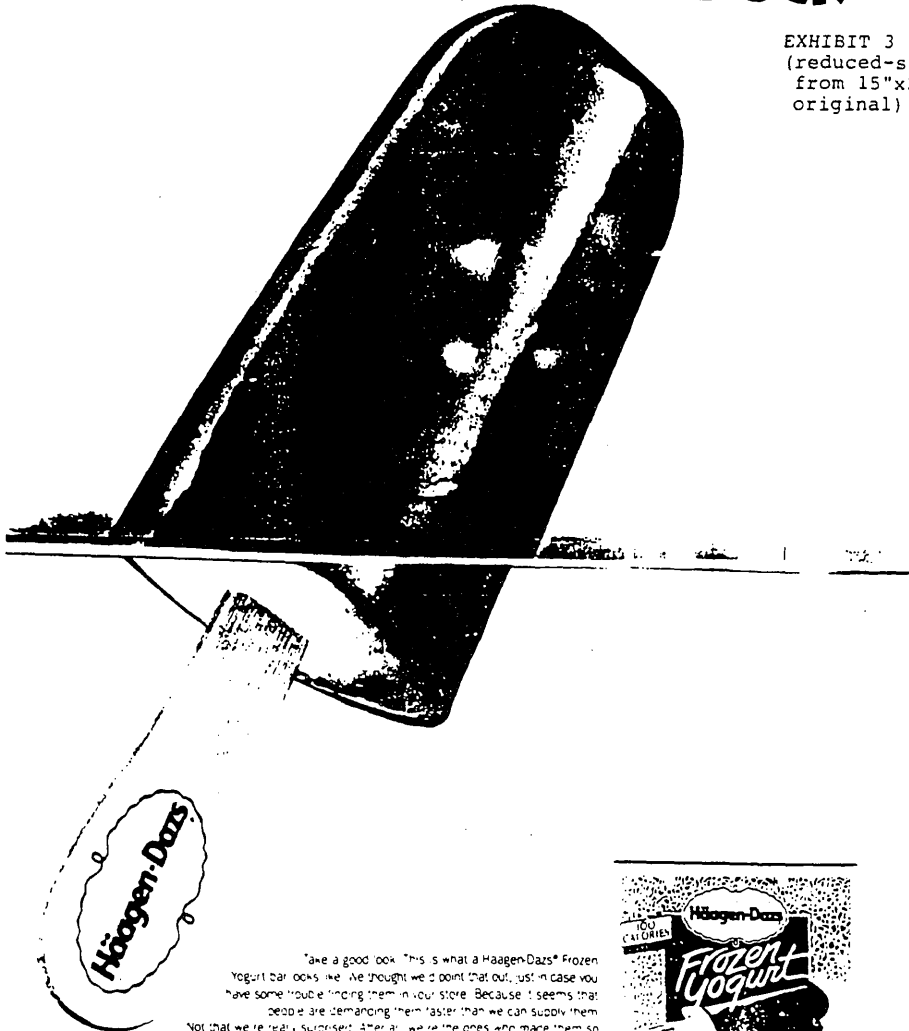
Try new Raspberry  
Rendezvous<sup>®</sup> and Orange  
Tango<sup>®</sup> Frozen Yogurt. Both  
are 98% fat free and still  
totally Häagen-Dazs.

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

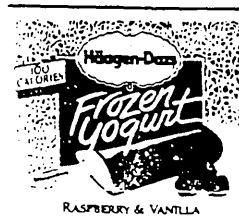
\*Frozen yogurt and sorbet combinations

# 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 just the finest ingredients: Cream, Sugar, and Real Fruit. And each with just 12 grams 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 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, its attorneys, 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 the respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 a 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 findings and enters the following order:

1. Respondent BBDO Worldwide, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1285 Avenue of the Americas, in the City of New York, State of New York.

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 BBDO Worldwide, 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 yogurt, frozen sorbet or ice cream product (excluding all other food or confection products in which ice cream is an ingredient comprising less than fifty percent of the total weight of the involved 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 yogurt, frozen sorbet or ice cream 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:

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, or the basis relied upon for 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.

This order will terminate on January 24, 2016, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

## VII.

*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.

## IN THE MATTER OF

## THE UPJOHN COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-3638. Complaint, Feb. 8, 1996--Decision, Feb. 8, 1996*

This consent order requires, among other things, the respondents to divest, within 12 months, Pharmacia Aktiebolag's 9-AC assets, an inhibitor drug for the treatment of colorectal cancer, to a Commission-approved acquirer. If the transaction is not completed in the prescribed time, the Commission will be allowed to appoint a trustee.

*Appearances*

For the Commission: *Ann Malester, Claudia Higgins and William Baer.*

For the respondents: *Stuart Meiklejohn, Sullivan & Cromwell, New York, N.Y. and Steven Sunshine, Shearman & Sterling, Washington, D.C.*

## COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondents The Upjohn Company ("Upjohn"), a Michigan corporation subject to the jurisdiction of the Commission, and Pharmacia Aktiebolag ("Pharmacia"), a Swedish corporation subject to the jurisdiction of the Commission, have agreed to merge in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

## I. RESPONDENTS

1. Respondent Upjohn is a corporation organized, existing, and doing business under and by virtue of the laws of the State of