

Complaint

121 F.T.C.

IN THE MATTER OF

THE DANNON COMPANY, INC.

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

Docket C-3643. Complaint, March 18, 1996--Decision, March 18, 1996

This consent order prohibits, among other things, a New York-based frozen yogurt manufacturer from misrepresenting the amount of fat, calories, or cholesterol in any frozen yogurt products. The consent order requires the respondent to pay \$150,000 to the U.S. Treasury. This action settles allegations stemming from nutritional claims made in advertisements for Dannon's Pure Indulgence frozen yogurt.

Appearances

For the Commission: *Peter Metrinko* and *Justin Dingfelder*.

For the respondent: *Stuart M. Pape* and *Mark A. Heller*, *Patton Boggs*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that The Dannon Company, Inc., a corporation, ("respondent"), has violated Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), 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 its office and principal place of business located at 120 White Plains Road, Tarrytown, NY.

PAR. 2. Respondent has manufactured, advertised, promoted, offered for sale, sold and distributed a frozen yogurt known by the product name Pure Indulgence. This product is a "food" within the meanings 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 Pure Indulgence, including, but not limited to, the following television advertisement, which contained, *inter alia*, the following statements:

Beware: the following graphic images may prompt feelings of guilt among viewers.
Hey. It's OK.
It's Frozen Yogurt.
Proceed Without Caution.

PAR. 5. Through the use of the statements contained in the advertisement referred to in paragraph four, respondent has represented, directly or by implication, that Dannon Pure Indulgence is low in fat, low in calories, and lower in fat than ice cream.

PAR. 6. In truth and in fact, at the time the advertisement was disseminated, certain flavors of Dannon Pure Indulgence were not low in fat, not low in calories, and not lower in fat than many ice creams. Therefore the representations set forth in paragraph five were false and misleading.

PAR. 7. The acts and practices of 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 Section 5(a) and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have violated the said Act, and that a 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 The Dannon Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 120 White Plains Road, Tarrytown, NY.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondent The Dannon Company, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacture, advertising, packaging, labeling, 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 such product in regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

III.

It is further ordered, That respondent, its successors and assigns, shall pay to the Federal Trade Commission, by cashier's check or certified check made payable to the U.S. Treasury and delivered to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington, DC 20580, the sum of \$150,000. Respondent shall make this payment on or before the tenth day following the date of entry of this order. In the event of any default on any obligation to make payment under this section, interest, computed pursuant to 28 U.S.C. 1961(a), shall accrue from the date of default to the date of payment.

IV.

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 labeling, packaging, advertisements and promotional materials setting forth any representation covered by this order;
2. All materials that were relied upon to substantiate any representation covered by this order; and
3. All test reports, studies, surveys, demonstrations or other evidence in its possession or control, that contradict, qualify, or call

into question such representation or the basis upon which respondent relied for such representation, including complaints from consumers.

V.

It is further ordered, That respondent shall notify the Federal Trade 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 corporation which may affect compliance obligations arising out of this order.

VI.

It is further ordered, That respondent shall, within thirty 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, promotional materials, product labels or other materials covered by this order.

VII.

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

VIII.

It is further ordered, That this order will terminate on the eighteenth day of March, 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.

Complaint

121 F.T.C.

IN THE MATTER OF

MAMA TISH'S ITALIAN SPECIALTIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3644. Complaint, March 19, 1996--Decision, March 19, 1996*

This consent order prohibits, among other things, an Illinois ice cup dessert manufacturer from misrepresenting the existence or amount of calories or any other nutrient or ingredient in any frozen dessert product.

Appearances

For the Commission: *C. Steven Baker* and *Barbara Bender*.

For the respondent: *David Goroff, Hopkins & Sutter, Chicago, IL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Mama Tish's Italian Specialties, Inc. ("respondent"), a corporation, 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 Mama Tish's Italian Specialties, Inc. is an Illinois corporation, with its principal office or place of business at 4800 Central Avenue, Chicago, Illinois.

PAR. 2. Respondent has advertised, labeled, offered for sale, sold, and distributed Mama Tish's ice cups to the public. These products are "foods" 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 Mama Tish's ice cups, including but not necessarily limited to the attached Exhibit 1. These advertisements contain the statement "naturally low in calories."