

Complaint

122 F.T.C.

IN THE MATTER OF

GREY ADVERTISING, INC.

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

Docket C-3691. Complaint, Oct. 30, 1996--Decision, Oct. 30, 1996

This consent order prohibits, among other things, the New York-based advertising agency, that handled The Dannon Company's Pure Indulgence frozen yogurt account, from misrepresenting the fat, saturated fat, cholesterol, or calories in any frozen yogurt, frozen sorbet, and most ice cream products.

Appearances

For the Commission: *Rosemary Rosso* and *Michael Ostheimer*.

For the respondent: *Leonard Orkin, Kay, Collyer & Boose*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Grey Advertising, 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 Grey Advertising, Inc. is a New York corporation, with its principal office or place of business at 777 Third Avenue, New York, New York.

PAR. 2. Respondent, at all times relevant to this complaint, was an advertising agency of The Dannon Company, Inc., and prepared and disseminated advertisements to promote the sale of Dannon Pure Indulgence 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 Dannon Pure Indulgence frozen yogurt ("DPI"), including but not necessarily limited to the attached

Exhibit A. This advertisement contains the following statements and depictions:

VIDEO

Super: BEWARE: THE FOLLOWING GRAPHIC IMAGES MAY PROMPT FEELINGS OF GUILT AMONG VIEWERS.

Close-ups of frozen dessert.

Super: HEY

Super: IT'S OK

Man with frozen dessert container.

Scoops of frozen dessert falling into dish.

Super: It's FROZEN YOGURT

Close-up of container of DPI.

Woman eating DPI. Super: It's Pure Heaven

Scoops of DPI variously identified in supers as caramel pecan, heath bar crunch, and cookies n cream.

Containers of DPI. Super: New Dannon Pure Indulgence Frozen Yogurt

Scoops of DPI. Super: PROCEED WITHOUT CAUTION

(Exhibit A, television advertisement).

AUDIO

Announcer: The following graphic images may prompt feelings of guilt among viewers.

Announcer: New Dannon Pure Indulgence Frozen Yogurt.

Announcer: Very well... Proceed without caution.

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 advertisement attached as Exhibit A, respondent has represented, directly or by implication, that Dannon Pure Indulgence frozen yogurt 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 advertisements were disseminated, certain flavors of Dannon Pure Indulgence frozen yogurt 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. Respondent knew or should have known that the representations set forth in paragraph five were false and misleading.

PAR. 8. 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.

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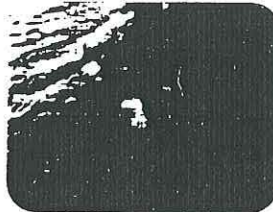
EXHIBIT A

RTV

THE FOLLOWING GRAPHIC IMAGES
MAY PROMPT FEELINGS OF

AMONG VIEWERS.

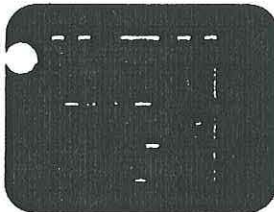
ANNCR: The following graphic
images may prompt feelings of
jealousy among viewers



MUSIC



MUSIC



MUSIC



MUSIC



MUSIC



MUSIC



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MUSIC

LE ON VIDEO-TAPE CASSETTE

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 violation of the Federal Trade Commission Act; 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 aforesaid draft complaint, a statement that the signing of the 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 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 findings, and enters the following order:

1. Respondent Grey Advertising, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office or place of business at 777 Third Avenue, New York, 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 Grey Advertising, 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 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 respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as a 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 under this order.

IV.

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.

V.

It is further ordered, That for five (5) 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, and complaints or inquiries from governmental organizations.

VI.

This order will terminate on October 30, 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

RUSTEVADER CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE MAGNUSON-MOSS WARRANTY ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9274. Complaint, Aug. 30, 1995--Decision, Oct. 30, 1996

This consent order prohibits, among other things, David F. McCready, a Pennsylvania-based former owner and officer of RustEvader Corporation, from representing that the products he markets are effective in preventing or substantially reducing corrosion in motor vehicle bodies or making any representation concerning the performance, efficacy or attributes of such products, unless such representations are true and the respondent possesses competent and reliable evidence to substantiate such claims, and from misrepresenting the existence or results of any test or study. In addition, the consent order requires the respondent to pay \$200,000 in consumer redress.

Appearances

For the Commission: *Michael Milgrom, John Mendenhall, Brinley H. Williams and Dana C. Barragate.*

For the respondents: *Keith Whann and Jay McKirahan, Whann & Associates, Dublin, OH. Mark Wendekier, Patton, PA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that RustEvader Corporation, and David F. McCready, individually and as an officer of RustEvader Corporation (referred to collectively herein as "respondents"), have 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 RustEvader Corporation a/k/a Rust Evader Corporation, sometimes d/b/a REC Technologies ("REC") is a Pennsylvania corporation with its office and principal place of business located at 1513 Eleventh Avenue, Altoona, Pennsylvania.

At times material to the allegations of this complaint, respondent David F. McCready ("McCready") has been the president and an owner and director of REC. His business address is the same as that