

may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

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, respondents, 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 twenty years from the date of its issuance, 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.

Benjamin I. Berman,
Acting Secretary.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from The Dannon Co., Inc., ("respondent" or "Dannon").

The proposed consent order has been placed on the public record for sixty (60) days for receipt of public comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns claims made by Dannon in its advertising for Pure Indulgence frozen yogurt.

The Commission's complaint in this matter charges Dannon with engaging in deceptive and unfair acts or practices in connection with the advertising of Pure Indulgence. The complaint alleges that respondents manufactured, advertised, offered for sale, sold or distributed a frozen yogurt sold under the name "Pure Indulgence," which it represented