

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	
)	File No. 952 3391
THE DANNON COMPANY, INC.,)	
a corporation.)	AGREEMENT CONTAINING
)	CONSENT ORDER TO
)	CEASE AND DESIST
)	
_____)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of The Dannon Company, Inc., hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an Order to cease and desist from the use of the acts and practices being investigated,

IT IS HEREBY AGREED by and between The Dannon Company, Inc., by its duly authorized officer and attorneys, and counsel for the Federal Trade Commission, that:

1. Proposed 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, New York, 10591.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

- c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and
- d. any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) issue its complaint corresponding in form and substance with the draft complaint attached hereto and its decision containing the following Order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. Delivery by the Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement 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 One-Hundred and fifty thousand dollars (\$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.

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.

Signed this 24th day of August, 1995.

THE DANNON COMPANY, INC.
a corporation

By: Patrick Gournay
Patrick Gournay
President and Chief Executive Officer

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