

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of BBDO WORLDWIDE, INC., a corporation.)))))	FILE NO. 942-3172 AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST
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The Federal Trade Commission, having initiated an investigation of certain acts and practices of BBDO Worldwide, Inc., a corporation, 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 BBDO Worldwide, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed 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, New York, NY 10019.

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

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; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement.

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 of 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 respondent, 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 draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. The 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 Section 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 of complaint here attached 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. The Order shall become final upon service. Delivery by the U.S. 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 rights 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 in 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. Proposed respondent 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 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 FURTHERED 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 twenty (20) 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 effect 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.

Signed this 2nd day of October, 1995.

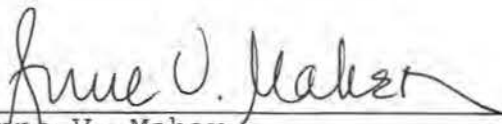
BBDO WORLDWIDE, Inc., a corporation

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