

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Robert Pitofsky, Chairman  
Mary L. Azcuenaga  
Janet Steiger  
Roscoe B. Starek, III  
Christine A. Varney

In the Matter of	)	
THE DANNON COMPANY, INC.,	)	DOCKET NO. C-3643
a corporation,	)	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 § 2.34 of its Rules, now in further conformity with the procedure prescribed in § 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 10591.

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.

By the Commission.

  
Donald S. Clark  
Secretary

[Seal]

ISSUED: March 18, 1996