

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill**

In the Matter of)
)
THE DANNON COMPANY, INC.,)
a corporation.)
_____)

DOCKET NO. C-4313

COMPLAINT

The Federal Trade Commission, having reason to believe that The Dannon Company, Inc., a corporation (“respondent”), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent The Dannon Company, Inc., is a Delaware corporation with its principal office or place of business at 100 Hillside Avenue, White Plains, NY, 10603.
2. Respondent has labeled, advertised, promoted, offered for sale, sold, and distributed DanActive and Activia to consumers.
3. DanActive, a probiotic dairy drink, is a “food” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act. Activia, a yogurt, is also a “food” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.
4. The acts and practices of respondent, as alleged herein, have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

DanActive

5. Respondent has disseminated or caused to be disseminated advertisements for DanActive, including but not limited to the attached Exhibits A through D. These advertisements contain the following statements and depictions:

A. Television Advertisement: “Backpack” (Exhibit A - CDROM and storyboard)

On screen: A boy is shown taking a test in school, playing baseball in the rain, and being thrown to a mat repeatedly in martial arts training.

Female VO: “Between exams, after-school activities, and tons of homework, my kid never stops.”

On screen: The boy arrives home looking tired; he drops his backpack inside the front door, as his mother kneels down and greets him, and the color drains from his face and body.

Male VO: “Your kids have a hectic life and don’t always eat right, and you don’t want their defenses to be weak.”

On screen: Mom’s hand reaches into refrigerator and removes a DanActive.

Male VO: “Delicious DanActive can strengthen them.”

On screen: The boy drinks the DanActive; graphic shows small yellow circles going from the bottle down his throat; the circles are identified as L. casei immunitas.

Print superscript: As part of a balanced diet and healthy lifestyle. Learn more at DanActive.com.

Male VO: “Only DanActive has L. casei Immunitas cultures and

On screen: The yellow circles encircle pink balls, forming a barricade that stops all but one of the fuzzy green, germ-like globs that attempt to penetrate the barricade.

Male VO: is clinically proven to help strengthen your body’s defenses.”

On screen: The boy finishes the DanActive, returns to full color, surrounded by a newly acquired yellow penumbra, and runs out of the house the next morning surrounded by his yellow penumbra, which then morphs into a yellow DanActive bottle.

Female VO: “And a little strengthening can really help.”

On screen: DanActive bottle with tag line “Help strengthen your family’s bodies defenses” and “clinically proven” banner

Male VO: “Help strengthen your family’s bodies defenses.”

On screen: “Dannon.”

“Today. For Tomorrow.”

B. Television Advertisement: “Backpack- New” (Exhibit B - CDROM and storyboard)

- On screen: A boy is shown taking a test in school, and being thrown to a mat in martial arts training. He arrives home looking tired, and drops his backpack inside the front door as his mother kneels down and greets him.
- Male VO: “Exams, activities, homework; your kids never stop and don’t always eat right
- On screen: The color drains from the boy’s face and body.
- Male VO: and you don’t want their defenses to be weak.”
- On screen: A bottle of DanActive rolls toward the viewer.
- Male VO: “DanActive can help. How?”
- On screen: Dramatization of the body appears, with circles simulating food going down into the gastrointestinal tract. At the bottom of the screen is a yellow band with the question “How are your defenses challenged?”
- Male VO: “Unwanted substances enter your body every day, reaching your intestines
- On screen: Visual shows the percentage 70% emerging from the digestive tract in the middle of a sunburst
- Male VO: where about 70% of your immune system is located.”
- On screen: Dramatization of the inside of the intestine shows holes appearing, and purple balls entering those holes. At the bottom of screen is the yellow band with the question “How are your defenses challenged?”
- Male VO: “When your defenses are weak, gaps may occur in your intestine wall allowing unwanted substances to pass.”
- On screen: The boy drinks the DanActive. Dramatization shows small yellow circles going from the bottle down his throat.
Fine print superscript: “When consumed daily as part of a balanced diet and healthy lifestyle”
- Male VO: “DanActive, with L. casei Immunitas works right there
- On screen: Dramatization shifts to inside of the intestine, where the yellow circles, which are identified as L. casei Immunitas, clump together to block the holes in the intestinal wall, so that the purple balls bounce off, instead of penetrate. At the bottom of the screen is the yellow band with the question “How does DanActive help?”
- Male VO: which may help your body close the gaps
- On screen: The boy runs out of the house the next morning. He has returned to full color, and is surrounded by a newly acquired yellow penumbra, which then morphs into a yellow DanActive bottle.

Male VO: and help strengthen his body's defenses.”

On screen: DanActive bottle with tag line “Help strengthen your family's bodies defenses” and “clinically proven” banner.
Print superscript: “Learn more at DanActive.com”

Male VO: “Which makes you feel good, too.”

On screen: “Dannon.”
“Today. For Tomorrow.”

C. **Print Advertisement (free standing insert):** (Exhibit C)

DANNON
DanActive™
L. CASEI IMMUNITAS™

IMMUNITY

Helps strengthen your
body's defenses.*

CLINICALLY
PROVEN

[Depiction of child and mother drinking DanActive and two containers of DanActive with “DanActive, L. Casei IMMUNITAS™, Helps Strengthen Your Body's Defenses, Immunity” on the labels.]

* as part of a balanced diet and healthy lifestyle

DanActive is a delicious, probiotic-cultured dairy drink that is clinically proven to help strengthen your body's defenses as part of a balanced diet and healthy lifestyle.

D. **Product Packaging:** (Exhibit D)

Appearing on the overwrap for the 8-bottle weekly pack:

DANNON
DanActive™
L. CASEI IMMUNITAS™

IMMUNITY

Helps Strengthen Your
Body's Defenses

7 + 1 Weekly Pack

6. Through the means described in Paragraph 5, including, but not limited to, the statements and depictions contained in the advertisements attached as Exhibits A through D, among others, respondent has represented, expressly or by implication, that drinking DanActive reduces the likelihood of getting a cold or the flu.

7. Through the means described in Paragraph 5, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 6, at the time the representation was made.

8. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 6, at the time the representation was made. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

9. Through the means described in Paragraph 5, including, but not limited to, the statements and depictions contained in the advertisements attached as Exhibits A through D, among others, respondent has represented, expressly or by implication, that DanActive is clinically proven to reduce the likelihood of getting a cold or the flu.

10. In truth and in fact, DanActive is not clinically proven to reduce the likelihood of getting a cold or the flu. Therefore, the representation set forth in Paragraph 9 was, and is, false or misleading.

Activia

11. Respondent has disseminated or caused to be disseminated advertisements for Activia, including, but not limited to, the attached Exhibits E through G. These advertisements contain the following statements and depictions:

A. **Television Advertisement:** "Mother & Daughter" (Exhibit E - CDROM and storyboard)

On screen: A young woman enters an antiques or curios shop, where an older woman is working.

Daughter: "Hey, mom. All work and no play?"

On screen: Older woman stands up, walks behind store counter, and gestures toward open boxes of restaurant take-out food.

Mother: “And too much take-out. I feel irregular. Bloating.”

Bird: “Bloating.”

On screen: Daughter hands her mother a carton of Activia

Daughter: “Here. Try Dannon Activia.”

Mother: “Activia. . .”

Bird: “Activia.”

On screen: Strawberries falling into white yogurt.

Female VO: “Delicious Dannon Activia,

On screen: Woman’s mid-section, on which are super-imposed yellow-green balls moving together in a clump
“CLINICALLY PROVEN WITH BIFIDUS REGULARIS”
Print superscript: “Scientifically proven to help with slow intestinal transit when consumed daily for two weeks.”

Female VO: with the natural culture Bifidus Regularis,

On Screen: The yellow-green balls merge into a downward-facing arrow; calendar from which 14 separate pages are torn off in sequence.

Female VO: it’s clinically proven to help regulate your digestive system

On screen: The arrow moves downward, off the screen.

Female VO: in two weeks.”

On screen: Mother tastes Activia.

Mother: “Mmm. Delicious.”

Daughter: “Soon you’ll be back to your regular self.”

Bird: “Regular!”

On screen: overwrap from 4-pack of Activia with tag line “Helps naturally regulate your digestive system in 2 weeks”

Female VO: “Activia” (singing).

On screen: “Dannon.”
“Today. For Tomorrow.”

B. Television Advertisement: “News” (Exhibit F - CDROM and storyboard)

On screen: green screen with Dannon and Activia logos.

On screen: green screen divides horizontally, to show Jamie Lee Curtis (JLC) sitting on couch holding newspaper, with headline that says “87% of Americans Have Occasional Digestive Issues.”

JLC: “First the bad news: Eighty-seven percent of this country suffers from digestive issues like occasional irregularity.”

On Screen JLC on couch.
Fine print superscript: “Helps relieve temporary symptoms of irregularity.”

JLC “No wonder. Our busy lives sometimes force us to eat the wrong things at the wrong time.”

On Screen close-up of JLC
JLC “Now the good news. I just discovered a yogurt called Activia that can help.”

On screen: Woman’s mid-section, on which are super-imposed yellow-green balls moving together in a clump
“CLINICALLY PROVEN WITH BIFIDUS REGULARIS”
Fine print superscript: “Scientifically proven to help with slow intestinal transit when enjoyed daily for two weeks as part of a balanced lifestyle and healthy diet.”

Male VO: “With the natural culture, Bifidus Regularis,

On Screen The yellow-green balls merge into a downward-facing arrow; calendar from which 14 separate pages are torn off in sequence.

Male VO: Activia eaten every day is clinically proven to help regulate your digestive system

On screen The arrow moves downward, off the screen
Male VO: in two weeks.”

On Screen JLC on couch holding container of Activia, and then tasting spoonful.
JLC “The other good news: Activia tastes great.”

On screen: overwraps from 4-packs of Activia and Activia Light, and Activia tub, with tag line “Helps naturally regulate your digestive system” and “clinically proven” banner

Female VO: “Activia” (singing).

On screen: “Dannon.”
“Today. For Tomorrow.”

C. **Internet Advertisement:** “Activia by Dannon” (Exhibit G, at p. 1)

Activia with Bifidus Regularis is scientifically proven to help with slow intestinal transit when eaten daily, as part of a balanced diet and healthy lifestyle.

LEARN MORE

12. Activia's webpage, www.activia.us.com, contains a link labeled "For Health Care Professionals" (Exhibit G, at p. 1). Clicking on that link takes the viewer to a page (Exhibit G, at p. 2) that is also entitled "For Health Care Professionals," and that says in part:

Scientific Resources

For health care professionals, who'd like to learn more about Activia and **Bifidus Regularis**, here is a link to a detailed scientific resource that will provide in-depth information about **Bifidus Regularis** and its effect on slow **intestinal transit**

[pdf icon] "Scientific Summary For Health Care Professionals" (1024 kb)

The "Scientific Summary For Health Care Professionals" is a four-page document that includes a discussion entitled "Effects of Activia on total transit time in elderly subjects," which reviews the results of two clinical studies by Meance et al. The reviews refer specifically only to the effects on transit time among elderly subjects given different daily doses of Activia.

The "For Health Care Professionals" page on the Activia website also contains a link labeled "View List of Peer-Reviewed Scientific Summaries," which leads to a two-page document (Exhibit G, at pp. 7-8) entitled "Studies on Bifidobacterium DN-173 010 from Danone." This pdf file contains four summaries of transit time studies, including summaries of the same two studies by Meance et al. The reviews of the Meance et al. studies also refer specifically only to the effects on transit time among elderly subjects given different daily doses of Activia.

13. Neither discussion in Exhibit G of the two studies by Meance et al. discloses that the studies, as conducted, employed a placebo group or that statistical significance was not achieved when the results of the placebo group and the matching active group were compared in both studies. In addition, the document entitled "Studies on Bifidobacterium DN-173 010 from Danone" does not include a summary of a peer-reviewed study by Nishida et al., or summaries of five unpublished studies that measured transit time of subjects consuming Activia or a placebo. Neither the Nishida study nor the five unpublished studies showed a statistically significant improvement in transit time when the Activia group was compared to its respective placebo group.

14. Through the means described in Paragraphs 11 and 12, including, but not limited to, the statements and depictions contained in the advertisements attached as Exhibits E through G, among others, respondent has represented, expressly or by implication, that eating one serving of Activia daily relieves temporary irregularity and helps with slow intestinal transit time.

15. Through the means described in Paragraphs 11 and 12, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representation set forth in Paragraph 14, at the time the representation was made.

16. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 14, at the time the representation

was made. Therefore, the representation set forth in Paragraph 15 was, and is, false or misleading.

17. Through the means described in Paragraphs 11 and 12, including, but not limited to, the statements and depictions contained in the advertisements attached as Exhibits E through G, among others, respondent has represented, expressly or by implication, that eating one serving of Activia daily is clinically proven to relieve temporary irregularity and help with slow intestinal transit time.

18. In truth and in fact, eating one serving of Activia daily is not clinically proven to relieve temporary irregularity and help with slow intestinal transit time. For example, as described in Paragraphs 12 and 13, (1) the two Meance et al. studies utilized placebo groups but that information was withheld from the scientific journal to which the studies were submitted for publication, thereby concealing the fact that there was no statistically significant difference in transit time between the active and placebo groups, and (2) eight of ten scientific studies conducted on Activia showed no statistically significant effect of Activia on transit time when compared to a placebo. Therefore, the representation set forth in Paragraph 17 was, and is, false or misleading.

19. The acts and practices of 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.

THEREFORE, the Federal Trade Commission, this thirty-first day of January, 2011, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL