

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 was low in fat, low in calories, and lower in fat than ice cream. At the serving size for frozen yogurt commonly consumed, Pure Indulgence was not low in fat or low in calories. Further, Pure Indulgence was not lower in fat than many ice creams.

The Commission's complaint alleges that the above representations for certain flavors of Pure Indulgence, at the time the advertising was disseminated, were false and misleading.

The consent order contains provisions designed to remedy the violations charged and to prevent Dannon from engaging in similar deceptive and unfair acts in the future.

Part I of the Commission's order prohibits respondent, in connection with the manufacture, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any frozen food product, 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. However, 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.

Part II of the order provides that nothing in the 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.

Under the terms of Part III of the order, respondents shall pay \$150,000.00 to the U.S. Treasury.

Part IV of the order requires Dannon to maintain copies of all materials relating to advertisements covered by the order and all documents relating to substantiation of advertising claims covered by the order.

Part V requires Dannon to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VI requires Dannon to distribute copies of the order to certain company officials and employees and certain other representatives and agents of Dannon.

Part VII requires Dannon to file with the Commission a report detailing compliance with the order.

Part VIII provides for termination of the order twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify any of their terms.