

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

0210174

COMMISSIONERS: **Timothy J. Muris, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

In the Matter of)	
)	
NESTLÉ HOLDINGS, INC.,)	
a corporation,)	
)	
DREYER’S GRAND ICE CREAM HOLDINGS, INC.,)	Docket No. C-4082
a corporation,)	
)	
and)	
)	
DREYER’S GRAND ICE CREAM, INC.,)	
a corporation.)	

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Nestlé Holdings, Inc., of certain voting securities of Respondent Dreyer’s Grand Ice Cream Holdings, Inc., which as a result of the transaction will be the parent of Respondent Dreyer’s Grand Ice Cream, Inc., hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of a draft Complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents Nestlé Holdings, Inc., and Dreyer’s Grand Ice Cream, Inc., with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent 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 Respondents have violated Section 5 of the Federal Trade Commission Act and that the Acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement containing the Decision and Order on the public record for a period of thirty (30) days, the Commission hereby issues its Complaint, makes the following jurisdictional finding and issues this Order to Maintain Assets:

1. Respondent Nestlé Holdings, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 383 Main Avenue, Fifth Floor, Norwalk, Connecticut 06851. Respondent Nestlé Holdings, Inc., is a subsidiary of and controlled by Nestlé S.A., a corporation organized, existing, and doing business under, and by virtue of, the laws of Switzerland, with its principal executive offices located at Avenue Nestlé 55, CH-1800 Vevey, Switzerland.
2. Respondent Dreyer's Grand Ice Cream Holdings, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 5929 College Avenue, Oakland, California 94618.
3. Respondent Dreyer's Grand Ice Cream, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 5929 College Avenue, Oakland, California 94618.
4. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions shall apply:

- A. "Nestlé" means Nestlé Holdings Inc., its parent Nestlé S.A., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Nestlé Holdings Inc., including, up until the Acquisition Date, but not limited to, Nestlé Ice Cream Company, LLC ("NICC"), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- B. "Nestlé S.A." means Nestlé S.A., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Nestlé S.A., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. "Dreyer's" means Dreyer's Grand Ice Cream Holdings, Inc. (referred to as New December, Inc. in the Acquisition Agreement) and Dreyer's Grand Ice Cream, Inc., their directors, officers, employees, agents and representatives, predecessors, successors, and assigns; their joint ventures, subsidiaries, divisions, groups and affiliates controlled by Dreyer's Grand Ice Cream Holdings, Inc. or Dreyer's Grand Ice Cream, Inc., including from and after the Acquisition Date NICC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. "Respondents" means Nestlé and Dreyer's, individually and collectively.
- E. "Commission" means the Federal Trade Commission.
- F. "CoolBrands" means CoolBrands International Inc., a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its office and principal place of business located at 4175 Veterans Highway, Ronkonkoma, New York 11779. CoolBrands includes, but is not limited to, Integrated Brands, Inc.
- G. "Acquisition" means the proposed acquisition of voting securities of Dreyer's by Nestlé

7. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of, any claim whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor;
 8. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in Paragraph III.A. of this Order.
 9. The Commission may on its own initiative or at the request of the Interim Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order;
 10. Respondents shall report to the Interim Monitor in accordance with the requirements of Paragraph III.B. of this Order and/or as otherwise provided in any trust agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to it by the Respondents. Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning compliance by Respondents with the provisions of this Order. These responsibilities of the Interim Monitor shall continue until the last obligations under the Order have been fully performed, unless otherwise directed by the Commission.
- C. The Interim Monitor appointed pursuant to Paragraph III.A. of this Order to Maintain Assets or Paragraph IV.A. of the Decision and Order may be the same person appointed as the trustee pursuant to Paragraph V.A. of the Decision and Order in this matter.

IV.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

V.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written

request with reasonable notice to Respondents, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of

VI.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. Three (3) business days after the divestiture of the Assets To Be Divested pursuant to Paragraph II or Paragraph V of the Decision and Order. Provided, however, that if Respondents divest the Assets To Be Divested to CoolBrands prior to the date the Commission issues the Decision and Order, and if at the time the Commission issues the Decision and Order it notifies Respondents that CoolBrands is not an acceptable acquirer of the Assets To Be Divested or that the manner in which the divestiture was accomplished was not acceptable, then Respondents must comply with this Order and this Order shall then terminate three (3) business days after the subsequent divestiture of the Assets To Be Divested pursuant to Paragraph II or Paragraph V of the Decision and Order.

By the Commission.

C. Landis Plummer