

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

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Thomas B. Leary
 Pamela Jones Harbour

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)	
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 REOPENING AND MODIFYING ORDER

er’s Grand Ice Cream Holdings, Inc

¹ Respondents had previously sought and received an extension of this provision from one year to twenty-one months.

Dreyer's previously distributed these products. Respondents must also provide technical and administrative services to CoolBrands, as needed, for a period not to exceed one (1) year.

Finally, the Respondents must supply sufficient volumes of additional ice cream products to CoolBrands to enable CoolBrands to profitably distribute Dreamery, Godiva ice cream, and Whole Fruit superpremium products, for a period not to exceed five (5) years.

II. THE REQUEST

The impetus for the Respondents' Request was the desire of CoolBrands to have certain changes made to the divestiture agreements to enable it to compete more effectively. The Request seeks to reopen and modify the Order to extend the period under which Dreyer's will provide certain Administrative Services to CoolBrands, pursuant to the Transitional Services Agreement, for an additional one year, until April 2006. The current agreement expired on April 1, 2005. CoolBrands explains that the loss of the Weight Watchers ice cream business, the integration of Kraft's yogurt business, and the sudden death of Mr. Richard Smith, an important member of the management team, has strained its management's time and prevented it from assuming the responsibilities covered by the Transitional Services Agreement. Affidavit of David J. Stein, President and CEO of CoolBrands ("Stein Affidavit") at ¶ 5.

III. STANDARD FOR REOPENING AND MODIFYING A FINAL ORDER

The Order may be reopened and modified on the grounds set forth in § 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b). Section 5(b) provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory

⁶ 16 C.F.R. § 2.51.

⁷ See *United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) (reopening and modification are independent determinations).

⁸ See *Federated Department Stores, Inc. v. Moitie*, 136 U.S. 000001 (6529.000E) 4.302000 0.0000 0

stretched its management resources, and the extension will better enable it to compete in the long term. Dreyer's has already agreed to the extension.

Specifically, CoolBrands recently lost the Weight Watchers ice cream business. Stein Affidavit at ¶ 6. Management was also involved in time-consuming litigation with Weight Watchers over the cancellation of the contract. CoolBrands recently acquired Kraft's yogurt business, and has been working hard to integrate this business. Stein Affidavit at ¶ 7. Mr. Smith's death has also impacted CoolBrands' business, causing a realignment of management duties. Stein Affidavit at ¶ 8. These developments have prevented CoolBrands from taking over the services covered by the Transition Services Agreement.

Respondents seek the modification under either change of fact or public interest grounds. Although the possibility that CoolBrands might lose the Weight Watchers ice cream business and acquire the Kraft yogurt business were not anticipated at the time the Order was entered, it is not clear that these changes to CoolBrands' business are unforeseeable “

Although the Commission has determined that Respondents have satisfied the public interest standard, the case for modification is not overwhelming. The deadlines for transitional services contained in Commission Orders are designed to provide the acquirer of divested assets with a reasonable amount of time to prepare to compete effectively in the market, and are not intended to create a long-term relationship between the seller of the assets and the acquirer. Having now extended the transitional services deadline twice at the request of CoolBrands, it is very unlikely that the Commission would further extend the deadline.

Accordingly,

IT IS ORDERED, That this matter be, and it hereby is, reopened; and

IT IS FURTHER ORDERED, That paragraph II.H. of the Order be, and it hereby is, modified, as of the effective date of this order, to read as follows:

H. At the request of the Commission Approved Acquirer, for a period not to exceed thirty-three (33) months from the date Respondents divest the Assets To Be Divested, Dreyer's shall provide Administrative Services to the Commission Approved Acquirer sufficient to enable the Commission Approved Acquirer to operate the Assets To Be Divested in a viable and competitive manner. In providing Administrative Services to the Commission Approved Acquirer, Dreyer's shall charge no more than its Service Cost of providing the Administrative Services.

By the Commission.

C. Landis Plummer
Acting Secretary

SEAL
ISSUED: July 12, 2005