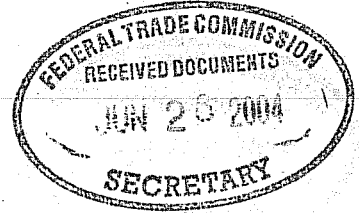


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)
 Nestlé Holdings, Inc.,)
 A corporation,)
)
 Dreyer's Grand Ice Cream Holdings, Inc.,)
 A corporation,)
)
 and)
)
 Dreyer's Grand Ice Cream, Inc.,)
 A corporation.)
)

File No. 021-0174, C-4082

REQUEST TO REOPEN PROCEEDINGS AND MODIFY DECISION AND ORDER

I. Introduction

Pursuant to 16 C.F.R. Section 2.51, Respondents Dreyer's Grand Ice Cream Holdings, Inc., Dreyer's Grand Ice Cream, Inc., and Nestlé Holdings, Inc., (collectively, "Respondents") request that the Federal Trade Commission (the "Commission"), to the extent necessary, reopen the proceeding in the above-captioned matter for the purposes of modifying the Decision and Order. As set forth below, Respondents make this request at the behest of CoolBrands International Inc. and its subsidiary Integrated Brands, Inc., the divestiture buyer in this proceeding (collectively, "CoolBrands"). This request is based upon changed factual conditions and the requested modifications and amendments are in the public interest insofar as they enable the divestiture buyer to compete more effectively in the marketplace.

Respondents also respectfully request that the Commission review this request on an expedited basis or grant an interim extension of the transition period through the upcoming summer season, which is the peak sales-season for ice cream.

Because this Request and its enclosures contain confidential and competitively sensitive business information – the disclosure of which may prejudice Respondents and CoolBrands or cause harm to the ongoing competitiveness of their respective businesses – Respondents have redacted such confidential information from the public version of the Request and its enclosures. The Respondents request that the confidential version of this petition and its

enclosures and the information contained therein be accorded confidential treatment pursuant to all applicable laws and regulations.

II. Summary of Requested Modification to Decision and Order

1. *CoolBrands and Dreyer's propose to extend portions of the Transition Services Agreement for an additional nine months.*

Respondents understand that due to logistical issues discovered and new business opportunities developed since the Decision and Order was finalized, CoolBrands requests the following modification in order to avoid severe damage to the divested brands and distribution business CoolBrands acquired. Respondents are sponsoring CoolBrands' request because the request will not adversely impact Dreyer's and will confer some benefit to Dreyer's.

Because of [REDACTED]

[REDACTED], CoolBrands has not been able to prepare to assume certain of the back-office functions being provided by Dreyer's pursuant to the Transition Services Agreement. The specific services are

[REDACTED]. CoolBrands will not be able to make other arrangements for the provision of these services by July 5, 2004. Without these services,

[REDACTED] CoolBrands' reasons for requesting this extension of the Transition Services Agreement are set forth in the attached affidavit from Mr. Stein. See Exhibit 1.

Attached as Exhibit 2 is a copy of a signed amendment to the Transition Services Agreement, which is on the same terms and conditions as the original Transition Services Agreement.

2. *CoolBrands and Dreyer's propose to enter into a new license agreement for Dreyer's to have the right to use the "Whole Fruit" name on Dreyer's fruit bar line for eighteen months.*

CoolBrands has, and will continue to have, the Whole Fruit sorbet pint line. CoolBrands and Dreyer's believe that the strong presence of Whole Fruit fruit bars benefits the Whole Fruit sorbet line. [REDACTED]

[REDACTED]. Thus, Dreyer's intends to continue to support the Whole Fruit name and grow its share of shelf space and sales.

Dreyer's understands that CoolBrands has independent reasons for requesting this new agreement, as set forth in the attached affidavit from Mr. Stein. See Exhibit 1.

Attached as Exhibit 3 is a copy of the proposed new Trademark License Agreement, which has been signed by both parties. Because the original trademark license included in the Amended and Restated Asset Purchase and Sale Agreement, dated June 4, 2003, will expire at the end of the one year decreed in the Decision and Order, Dreyer's believes that the new Trademark License Agreement does not require Commission approval, nor does the Decision and Order need to be modified. However, if the Commission believes that the new Trademark License Agreement requires a modification of the Decision and Order, then Dreyer's herewith requests that paragraph II.B. of the Decision and Order be modified in relevant part to read: "Provided further, that Respondents may license back from the Commission Approved Acquirer the rights to use the "Whole Fruit" name, logo, trademark, and trade dress solely in connection with the manufacture, distribution and sale of fruit bars for a period not to exceed thirty (30) months from the date Respondents divest the Assets to Be Divested."

This requested modification is time-sensitive. Dreyer's is supposed to stop selling fruit bars under the Whole Fruit name on July 5, 2004.

Accordingly, in order to accommodate CoolBrands' request to seek an extension of the license period, Dreyer's requests that it be permitted under all circumstances to produce and sell fruit bars in "Whole Fruit" packaging in the ordinary course of business while the requested extension is under consideration. And if the Commission denies the requested modification, Dreyer's requests that it be allowed to sell through any inventory of Whole Fruit Bars and packaging that it has in inventory as of the date of any such denial.

III. The requested modification to the decision and order and underlying divestiture agreements is based upon changed factual conditions and are in the public interest.

Pursuant to Section 2.51 of Title 16 of the Code of Federal Regulations, any person or entity subject to a Commission decision and order may request that the Commission reopen the proceeding and modify an existing decision and order. Pursuant to subsection (b) of Section 2.51, the request for reopening and modification should demonstrate those facts showing changed conditions and the reasons for the requested modification, as well as why the public interest is served by such requested modification. Dreyer's submits that the requested modifications are in the public interest and based upon changed conditions, as detailed above.

IV. Expedited review is requested in order to avoid unnecessary expense to the parties and disruption of service to customers and consumers.

Under the terms of the existing Decision and Order, Respondents are required to complete or fully execute various provisions of that Decision and Order by July 5, 2004. As


noted above, CoolBrands will effectively not be able to operate the divested businesses without the requested extension of portions of the Transition Services Agreement. At the same time, the requested modification will have the direct result of making CoolBrands a more effective competitor, with no offsetting adverse effects upon competition. To the contrary, the requested relief will allow CoolBrands to better service its customer base, which in turn will benefit consumers.

Due to these various impending deadlines, Respondents request a waiver of the public comment period and expedited review and approval of this request or an interim extension of the transition period.

Respectfully submitted.

Dated: June 23, 2004

DREYER'S GRAND ICE CREAM HOLDINGS, INC.


Vicki L. Randall, Associate General Counsel

DREYER'S GRAND ICE CREAM, INC.


Vicki L. Randall, Associate General Counsel

Respectfully submitted.

Dated: June 23, 2004

NESTLÉ HOLDINGS, INC.



Kristin Adrian, Senior Vice President and General Counsel

EXHIBIT 1

**AFFIDAVIT OF DAVID J. STEIN IN SUPPORT OF
REQUEST TO REOPEN PROCEEDINGS AND
MODIFY DECISION AND ORDER**

I, David J. Stein, swear and affirm that the following facts are true and correct to my knowledge and understanding:

1. I am the President and Co-Chief Executive Officer of CoolBrand International, Inc., a corporation organized and existing under the laws of the province of Nova Scotia, Canada, and Co-Chief Executive Officer of one of its subsidiaries, Integrated Brands, Inc. ("Integrated"), a corporation organized and existing under the laws of the State of New Jersey. As used herein, "CoolBrands" refers collectively to CoolBrands International, Inc. as well as Integrated.

2. Integrated is the divestiture buyer of those assets divested by Dreyer's Grand Ice Cream, Inc. ("Dreyer's") and Nestlé Ice Cream Company, LLC ("NICC") as part of a series of agreements including the Amended and Restated Asset Purchase and Sale Agreement by and among Dreyer's, New December, Inc., NICC and Integrated, dated as of March 3, 2003, as amended on March 17, 2003, April 16, 2003, and June 4, 2003, including all schedules and exhibits.

3. In early July of 2003, CoolBrands completed its acquisition of the various assets from Dreyer's, including the Dreamery ice cream brand, the Whole Fruit sorbet brand and the license for the Godiva ice cream brand (collectively, the "Divested Brands"), as well as certain NICC distribution assets in various markets. In addition, the divestiture agreements included an agreement providing for Dreyer's to provide certain back-office functions for one year following the closing of the divestiture (the "Transition Services Agreement").

4. Over the ensuing months, new business opportunities that were developed after the divestiture have placed a severe strain on CoolBrands' resources. In particular, CoolBrands launched an entirely new line of super premium ice cream in pint containers and frozen novelties under the Atkins brand name, as well as other new product extensions under the Eskimo Pie and Tropicana brand names which together comprised the largest new product introduction program in CoolBrands' history. The great – indeed, unexpected – success of these new products, and the resulting strain on CoolBrands' manufacturing, distribution, marketing and administrative resources, has delayed CoolBrands' progress on several fronts, [REDACTED]

5. Due to the foregoing, CoolBrands requests the following modifications to the Decision and Order: (a) to extend portions of the Transition Services Agreement for a period of nine months [REDACTED] and (b) to extend for a period of eighteen months the term of the license permitting Dreyer's to use the "Whole Fruit" name on Dreyer's' line of frozen fruit bar novelties [REDACTED]

[REDACTED]

6. The specific services under the Transition Services Agreement that CoolBrands seeks to extend are: [REDACTED]

[REDACTED] CoolBrands is actively pursuing arrangements to assume these functions, but will not be able to complete these arrangements by July 5, 2004 [REDACTED]

[REDACTED] CoolBrands has already proposed the foregoing this modification to the Decision and Order and divestiture agreements to Dreyer's, who I understand is willing to make these changes.

7. Pursuant to Section II, A and B of the Decision and Order, Dreyer's transferred to CoolBrands all rights to the Divested Brands, including the rights to the "Whole Fruit" name previously used by Dreyer's to manufacture and sell frozen fruit bars as well as frozen sorbet. At the same time, the Decision and Order authorized Integrated Brands to license to Dreyer's the right to use the "Whole Fruit" name, logo, trademark and trade dress solely to manufacture, distribute and sell frozen fruit bars for a period not to exceed one year (Decision and Order, Section II, A and B), and the divestiture agreements provided for such a one year license to Dreyer's.

8. CoolBrands seeks to modify the Decision and Order to enable it to license the "Whole Fruit" name to Dreyer's for purposes of manufacturing, distributing and selling frozen fruit bars for an additional eighteen month period. [REDACTED]

[REDACTED] CoolBrands has already proposed the foregoing this modification to the Decision and Order and divestiture agreements to Dreyer's, who I understand is willing to make these changes. The substantive explanation for this proposed modification follows.

9. [REDACTED]

10. [REDACTED]

[REDACTED]

11

[REDACTED]

12.

[REDACTED]

Competition would not be adversely affected in any way.

13.

[REDACTED]

14. Based on these considerations, CoolBrands seeks to extend the license period

[REDACTED]
Consequently, CoolBrands requests that the Decision and Order be modified to extend by eighteen months the period during which Dreyer's may continue to use the "Whole Fruit" name for the manufacture, distribution and sale of frozen fruit bars.

[REDACTED]

15. Dreyer's has indicated its willingness to extend its license of the "Whole Fruit" name and continuing production of fruit bars using such name. In modifying the Asset Purchase and Sale Agreement to allow for the license term to be extended for an additional eighteen months, CoolBrands and Dreyer's have also agreed, among other things,

[REDACTED]

16.

[REDACTED]

17. Extending this license period will serve the public interest

[REDACTED]

At the same time, extending this license creates no adverse competitive impacts, insofar as the parties continue to compete with their own respective product lines, including fruit bar and sorbet products.

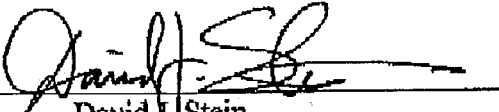
18. CoolBrands requests expedited review of this Request for Modification. Under the terms of the existing Decision and Order, Respondents are required to complete or fully execute Dreyer's discontinuance of use of the "Whole Fruit" name on fruit bars by the end of June of 2004. As set forth above, the parties must begin immediately in order to meet this requirement.

[REDACTED]

19. At the same time, the requested changes described in this Request for Modification will have the direct result of making CoolBrands a more effective competitor, with no offsetting adverse effects upon competition. To the contrary, the requested relief will allow CoolBrands to better compete in the super premium pint segment, which in turn benefits consumers.

20. Due to this impending deadline, we ask for immediate review and approval of this request.

Executed this 23rd day of June, 2004 in New York, New York.


David J. Stein