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

**COMMISSIONERS: Robert Pitofsky, Chairman  
Mary L. Azcuenaga  
Janet D. Steiger  
Roscoe B. Starek, III  
Christine A. Varney**

**In the Matter of  
GREY ADVERTISING, INC.,  
a corporation.**

**DOCKET NO. C-3691**

**DECISION AND ORDER**

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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 the respondent has violated the Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Grey Advertising, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office or place of business at 777 Third Avenue, New York, New York 10017.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## **ORDER**

### **I.**

**IT IS ORDERED** that respondent Grey Advertising, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any frozen yogurt, frozen sorbet or ice cream product (excluding all other food or confection products in which ice cream is an ingredient comprising less than fifty percent of the total weight of the involved product) in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist 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. 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.

### **II.**

Nothing in this Order shall prohibit respondent from making any representation that is specifically permitted in labeling for any frozen yogurt, frozen sorbet or ice cream by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

### **III.**

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

### **IV.**

**IT IS FURTHER ORDERED** that respondent shall, within thirty (30) days after service of this Order, distribute a copy of this Order to each of its operating divisions and to each of its

officers, agents, representatives, or employees engaged in the preparation or placement of advertisements or other materials covered by this Order.

## V.

**IT IS FURTHER ORDERED** that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon in disseminating such representation; and
2. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers, and complaints or inquiries from governmental organizations.

## VI.

This Order will terminate on October 30, 2016, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any paragraph in this Order that terminates in less than twenty years;
- B. This Order's application to any respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

**VII.**

**IT IS FURTHER ORDERED** that respondent shall, within sixty (60) days after service of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

By the Commission.

Donald S. Clark  
Secretary

Issued: October 30, 1996