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BY FAX AND FEDERAL EXPRESS

The Honorable Donald S. Clark, Secretary
United States Federal Trade Commission, Room H-172
600 Pennsylvania Avenue, N.W.
Washington, District of Columbia 20580

Re:

Nestle Holdings Inc., Transaction No. 021-0174, C. \$082

Dear Mr. Clark:

Enclosed are the original and twelve copies of the public version of the parties Requests for Prior Approval and to Reopen Proceedings and Modify Decision and Order for the above-referenced transaction.

Sincerely,

Joseph D. Larson

Enclosures

REQUESTS FOR PRIOR APPROVAL AND 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 and approving certain amendments to the divestiture agreements. 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. Because CoolBrands has first-hand knowledge of the facts relevant to the requested modifications and amendments, attached hereto as Exhibit 1 is an affidavit from David Stein, the President and Co-Chief Executive Officer of CoolBrands International, Inc. Although Respondents can not independently confirm most of the statements in the attached affidavit, Respondents has no reason to doubt the complete accuracy of the attached.

Dreyer's requests that the Commission waive the public comment period for this proceeding because (i) the parties would have to redact almost the entire request for modification and attachments thereto because most of the contents are sensitive and confidential; and (ii) the delay resulting from the comment period would impose various burdens upon CoolBrands and Dreyer's over the next few months — which would otherwise be obviated by the requested modifications. Hence, Dreyer's respectfully requests 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.

II. Summary of Requested Modifications to Decision and Order and Divestiture Agreements

Specifically, as set forth in more detail in the attached affidavit from Mr. Stein, Respondents understands that due to logistical issues discovered and new business opportunities developed since the Decision and Order was finalized, CoolBrands requests the following modifications in order to successfully execute CoolBrands' new business opportunities, improve CoolBrands' operating efficiencies, and avoid substantial capital expenditures that serve no useful long term purpose. Respondents are sponsoring CoolBrands' requests because the requests will either not adversely impact Dreyer's or will confer some benefit to Dreyer's.

1. In order to insure the competitiveness of CoolBrands distribution business and Dreyer's "premium" business, Dreyer's and CoolBrands propose to amend their Grocery Carrier and Non-Grocery Distribution Agreements, which are incorporated into the Decision and Order, to authorize CoolBrands to deliver

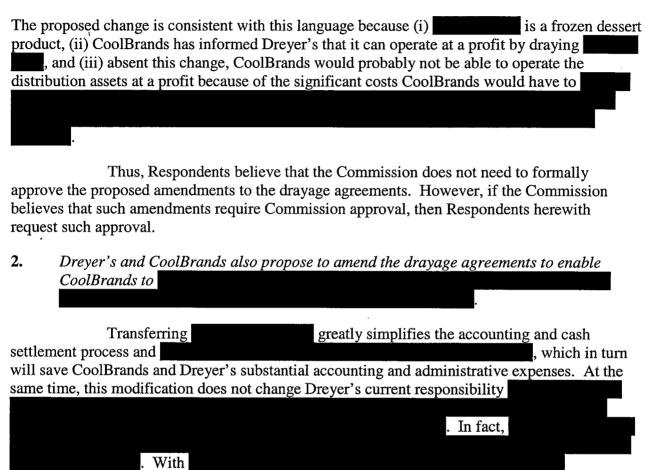
The Grocery Carrier Agreement and Non-Grocery Distribution Agreement
(collectively, the "drayage agreements") provide that CoolBrands can dray the
products in the divestiture markets. But Dreyer's also has
product lines that Drever's would continue to deliver
itself. Dreyer's has approached a number of its retailer customers in the divestiture markets to
discuss having CoolBrands deliver Dreyer's products pursuant to the drayage
agreements. Certain of these customers have expressed displeasure with this proposed change
because it is inconvenient to the customer and asked that they receive deliveries of Drever's
entire line from only one distributor. Dreyer's believes that if it were forced to split the
delivery of its product lines, Dreyer's would likely suffer competitive harm especially
vis-à-vis
In contrast, Dreyer's has received no customer complaints related to CoolBrands'
drayage of the products and Dreyer's believes that CoolBrands' continued delivery
of would have no adverse effect on the competitiveness of the line. Note that
CoolBrands will not receive any material competitive information as the delivery agent for
. Approximately
. For
. As such, CoolBrands will receive no customer pricing information about
. As to the remaining
. Also, by the time CoolBrands
. This, by the time coordinates
. This is
because retailers set their promotion schedules at least three months in advance. When Dreyer's
and CoolBrands are competing for promotion slots at that time, CoolBrands has no information
as to Dreyer's pricing or marketing plans. Thus, there is little, if any, incremental information
CoolBrands will receive
. Most importantly,
•

Dreyer's understands that CoolBrands has independent reasons for requesting these amendments, as set forth in the attached affidavit from Mr. Stein.

For the reasons above, Dreyer's and CoolBrands propose amending the drayage agreements. The proposed amendments, signed by both parties, are attached hereto as Exhibit 2. Note that the Decision and Order will not need to be modified. The Decision and Order, at II. I., provides:

"At the request of the Commission Approved Acquirer, Dreyer's shall enter into an agreement with the Commission Approved Acquirer for a period not to exceed five (5) years whereby Dreyer's will supply sufficient volumes of frozen dessert

products to the Commission Approved Acquirer in a manner designed to enable the Commission Approved Acquirer to operate the Distribution Assets at a profit. Entry into and compliance with the Integrated Brands Agreement meets this requirement."



Dreyer's understands that CoolBrands has independent reasons for requesting these amendments, as set forth in the attached affidavit from Mr. Stein.

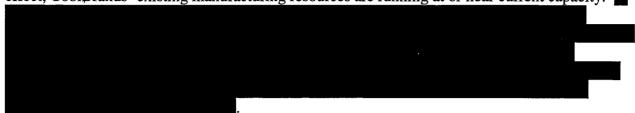
CoolBrands receives no pricing information for these products.

For the reasons above, Dreyer's and CoolBrands propose amending the drayage agreements. The proposed amendments, which are signed by both parties, are attached hereto as Exhibit 2. The Decision and Order says nothing about this subject and thus will not need to be modified.

Given that this is a technical change solely for accounting reasons, Respondents believes that the Commission does not need to formally approve the proposed amendments to the drayage agreements. However, if the Commission believes that such amendments require Commission approval, then Respondents herewith requests such approval.

3. CoolBrands and Dreyer's propose to enter into a new Co-Pack Agreement for the divested products that will last for twelve months.

Dreyer's understands that as a result of greater than anticipated demand for new products developed and manufactured by CoolBrands since the Decision and Order went into effect, CoolBrands' existing manufacturing resources are running at or near current capacity.



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

Attached as Exhibit 3 is a copy of the signed, proposed new Co-Pack Agreement, which is on the same terms and conditions as the original Co-Pack Agreement. Because the original Co-Pack Agreement will expire at the end of the one year decreed in the Decision and Order, Respondents believe that the new Co-Pack Agreement does not require Commission approval nor does the Decision and Order need to be modified. However, if the Commission believes that the new Co-Pack Agreement requires a modification of the Decision and Order, then Respondents herewith request that paragraph II. E. of the Decision and Order be modified to read: "At the request of the Commission Approved Acquirer, for a period not to exceed two (2) years from the date Respondents divest the Assets to Be Divested ...".

III. THE REQUESTED MODIFICATIONS TO THE DECISION AND ORDER AND UNDERLYING DIVESTITURE AGREEMENTS ARE 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 and in the attached affidavit from David Stein.

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 set forth above, in order to implement certain of these steps, the parties must begin immediately, or in any event over the next several weeks, to meet those requirements. As also discussed above

PUBLIC VERSION

and in the attached affidavit from David Stein, the requirements that are the subject of this Request for Modification impose unnecessary financial and logistical burdens upon CoolBrands as well as Respondents with little, if any, offsetting benefits to customers or consumers.

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 service its customer base, which in turn benefits consumers.

Due to the 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: May 2/, 2004

DREYER'S GRAND ICE CREAM HOLDINGS, INC.

Mark LeHocky, Vice President and General Counsel

DREYER'S GRAND ICE CREAM, INC.

Mark LeHooky, Vice President and General Counsel

Respectfully submitted.

Dated: May 24, 2004

NESTLÉ HOLDINGS, INC.

Kristin Adrian, Senior Vice President and General Counse