

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANONE S.A.

and

THE WHITEWAVE FOODS COMPANY,

Defendants.

CASE NO.:

JUDGE:

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. “Acquirer” means the entity to whom defendants divest the Divestiture Assets.

B. “Danone” means defendant Danone S.A., a *société anonyme* organized under the laws of France, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “WhiteWave” means defendant The WhiteWave Foods Company, a Delaware corporation with its headquarters in Denver, Colorado, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Stonyfield” means Stonyfield Farm, Inc., a Delaware corporation with its headquarters in Londonderry, New Hampshire, its successors and assigns, and its subsidiaries and divisions, and their respective directors, officers, managers, agents and employees, but does not include Stonyfield’s minority interest in Stonyfield Europe Ltd.

E. “Oikos Brands” means all Oikos trademarks, service marks, trade names, trade dress, logos and domain names, corporate names, and goodwill.

F. “Oikos Schreiber” means Danone’s conventional Greek yogurt products manufactured under the Oikos trademark at the Schreiber Foods, Inc. facility in Shippensburg, Pennsylvania as of the date of the Complaint filed in this matter.

G. “Brown Cow Schreiber” means Stonyfield’s conventional Greek yogurt products manufactured under the Brown Cow trademark at the Schreiber Foods, Inc. facility in Shippensburg, Pennsylvania as of the date of the Complaint filed in this matter.

H. “Brown Cow Greek Formula” means the intellectual property relating to the formula, recipe, and specifications used as of the date of the Complaint filed in this matter for the production of the Oikos Schreiber and Brown Cow Schreiber conventional Greek yogurt products.

I. “Minster Facility” means Danone’s manufacturing facility in Minster, Ohio.

J. “Divestiture Assets” means Stonyfield, including:

1. Stonyfield’s headquarters, facility, and warehouse located at Burton Drive, Londonderry, New Hampshire 03053;

2. The following tangible assets that comprise the Stonyfield business, including but not limited to:

(a) all manufacturing equipment, tooling and fixed assets, personal property, warehouses (leased and owned), trucks and other vehicles, inventory, office furniture, materials, supplies, and other tangible property and all assets used exclusively in connection with Stonyfield; and

(b) all licenses, permits and authorizations issued by any governmental organization relating to Stonyfield; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to Stonyfield, including supply agreements; all customer lists, routes, contracts, accounts, and credit records relating to Stonyfield; all repair and performance records relating to Stonyfield; and all other records relating to Stonyfield. Notwithstanding the above, for any tangible asset in this subsection that is shared between Danone and Stonyfield, Danone and Stonyfield shall each be entitled to retain that portion of the asset that relates to their respective business. To the extent Danone's consent or waiver of exclusive rights is required for Stonyfield to renegotiate or modify the terms of any shared asset in this subsection, Danone shall take all steps necessary to remove any impediments that would prevent Stonyfield from renegotiating or modifying the terms of the shared asset.

3. The following intangible assets:

(a) all intangible assets owned, licensed, controlled, or used primarily by Stonyfield (except the Oikos Brands), including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, formulas, recipes, proprietary cultures, technical information, computer software and related documentation, know-how, trade secrets, drawings, artwork, blueprints, designs, design protocols, specifications for materials, specifications for production and packaging, specifications for parts and devices, safety procedures for the handling of materials and

substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to Stonyfield, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments;

(b) a non-exclusive, perpetual, royalty-free license, transferable among Stonyfield and its subsidiaries, to use the Brown Cow Greek Formula to produce all Stonyfield products that use the Brown Cow Greek Formula as of the date of the Complaint; provided that if prior to the divestiture ordered by this Final Judgment, Stonyfield ceases the use of the Brown Cow Greek Formula, this license will not be included as a Divestiture Asset;

(c) a non-exclusive, perpetual, royalty-free license, transferable among Stonyfield and its subsidiaries to use any intangible assets (except the Brown Cow Greek Formula and Activia trademarks) that are not included in paragraph I(J)(3)(a) above, and were used in connection with the development, production, manufacture, or sale of any Stonyfield product. To the extent Danone's consent or waiver of exclusive rights is required for Stonyfield to access or utilize a license, Danone will take all steps necessary to provide Stonyfield with the license and remove any impediments that would prevent Stonyfield from utilizing the license. Any improvements or modifications to these intangible assets developed by the Acquirer of Stonyfield shall be owned solely by that Acquirer; and

(d) a non-exclusive, perpetual, royalty-free license, transferable among Stonyfield and its subsidiaries, to use Danone's intangible assets related to the design and manufacture of the 3.1 oz plastic bottles used to package Stonyfield products at the Minster Facility as of the date of the Complaint.

II. OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the Divestiture Assets for the purpose of establishing a viable competitor in the production and sale of Stonyfield products to remedy the effects the United States alleges would otherwise result from Danone's acquisition of WhiteWave. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Divestiture Assets remain an independent, economically viable, and ongoing business concern that will remain independent and uninfluenced by defendants, and that competition is maintained during the pendency of the ordered divestiture.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business days after

defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

C. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Hold Separate Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section X as though the same were in full force and effect as the final order of the Court.

D. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

E. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

F. In the event (1) the United States has withdrawn its consent, as provided in Paragraph IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Hold Separate Stipulation and

Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

G. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. HOLD SEPARATE PROVISIONS

Until the divestiture required by the proposed Final Judgment has been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Divestiture Assets as an independent, ongoing, economically viable competitive business, with management, sales, and operations of such assets held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate their development, production, marketing, or terms of sale of any products with those produced by or sold under any of the Divestiture Assets. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Divestiture Assets will be maintained and operated as an independent, ongoing, economically viable, and active competitor in the markets for all products produced or sold by Stonyfield as of the date of the Complaint filed in this matter; (2) management of the Divestiture Assets will not be influenced by defendants; and (3) the books, records, competitively sensitive sales, marketing, pricing information, and decision-making concerning the development, production, distribution, or sales of products by or under the Divestiture Assets will be kept separate and apart from defendants' other operations.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the products produced by or sold under the Divestiture Assets. Defendants shall maintain at 2016 or previously approved levels for 2017, whichever are higher, all promotional, advertising, sales, technical assistance, marketing, and merchandising support for the Divestiture Assets.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as an economically viable and competitive, ongoing business, consistent with the requirements of Paragraphs V(A) and (B).

E. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Divestiture Assets.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

I. Defendants' employees with primary responsibility for the design, development, manufacturing, production, distribution, marketing, or sale of products produced or sold by Stonyfield shall not be transferred or reassigned to other areas within

the company, except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days notice of any such transfer.

J. Defendants shall appoint a person or persons to oversee the Divestiture Assets and who will be responsible for defendants' compliance with this section. This person shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of the proposed Final Judgment. In the event such person is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the proposed Final Judgment to complete the divestiture pursuant to the proposed Final Judgment to an Acquirer acceptable to the United States.

VI. DURATION OF HOLD SEPARATE OBLIGATIONS

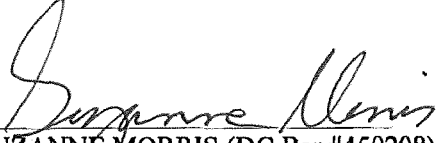
Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until (1) consummation of the divestiture required by the proposed Final Judgment or (2) further order of the Court. If the United States voluntarily dismisses the

Complaint in this matter, defendants are released from all further obligations under this Hold
Separate Stipulation and Order.


DATED: April 3, 2017

Respectfully submitted,

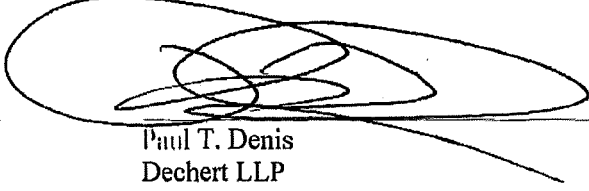
**FOR PLAINTIFF
UNITED STATES OF AMERICA:**


SUZANNE MORRIS (DC Bar #450208)
United States Department of Justice
Antitrust Division, Litigation II Section
450 Fifth Street N.W., Suite 8700
Washington, D.C. 20530
Telephone: (202) 307-1188
Facsimile: (202) 514-9033
suzanne.morris@usdoj.gov

**FOR DEFENDANT
DANONE S.A.:**


Ilene Knable Gotts
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street,
New York, NY 10019
Telephone: (212) 403-1247
ikgotts@wlrk.com

**FOR DEFENDANT
THE WHITEWAVE FOODS COMPANY:**


Paul T. Denis
Dechert LLP
1900 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 261-3430
paul.denis@dechert.com

ORDER

IT IS SO ORDERED by the Court, this ____ day of _____, 2017.

United States District Judge