

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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CHOBANI, LLC,

Plaintiff,

**COMPLAINT FOR  
DECLARATORY JUDGMENT**

v.

Civil Action No.: 3:16-cv-30 (DNH/DEP)

THE DANNON COMPANY, INC.,

Defendant.

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Plaintiff Chobani, LLC (“Chobani”), for its complaint against defendant The Dannon Company, Inc. (“Dannon”), alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action for declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 seeking a determination that Chobani has not made false, misleading, disparaging, or deceptive statements or claims in connection with advertisements for various of its Greek Yogurt products in violation of the Lanham Act and/or New York state law, and alleges as follows:

**THE PARTIES**

2. Chobani is a Delaware Limited Liability Company with principal offices located at 147 State Highway 320 Norwich, New York.

3. Upon information and belief, Dannon is a Delaware Corporation with principal offices located at 100 Hillside Avenue, White Plains, New York.

**JURISDICTION AND VENUE**

4. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Chobani seeks a declaration from the Court that none of the advertising claims made by Chobani in

connection with the promotion of its Greek Yogurt products that have been accused by Dannon constitute false or misleading advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) or New York state law.

5. This Court has subject matter jurisdiction in this action pursuant to 28 U.S.C. §§ 1331, 1338, and 2201.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

7. This Court has personal jurisdiction over Dannon by virtue of Dannon's accusations that Chobani has engaged in false or misleading advertising directed against Dannon in this district. In addition, upon information and belief, Dannon resides in this state, regularly does and/or transacts business in this state and district, contracts to supply goods in this state and district, derives substantial revenues in this state and district, and knows or expects its actions to have consequences that may give rise to litigation in this state and district.

**DANNON'S ACCUSATIONS BASED ON ADS FOR  
CHOBANI SIMPLY 100<sup>®</sup> GREEK YOGURT**

8. Chobani was established in 2004 and just six years later it became the #1 Greek Yogurt brand in the United States.

9. Chobani is committed to making high quality Greek Yogurt with simple, authentic, and natural ingredients, such as fresh milk from local farmers and wholesome fruit.

10. Chobani Simply 100<sup>®</sup> Greek Yogurt is the only nationally distributed brand of reduced calorie Greek Yogurt that does not contain artificial sweeteners or artificial preservatives.

11. On or about January 6, 2016, Chobani launched a multi-media ad campaign to advertise its Chobani Simply 100<sup>®</sup> Greek Yogurt (the "Simply 100 Campaign"), including

online, print, and television advertising, emphasizing that Chobani's product contains no artificial sweeteners and no artificial preservatives.

12. The Simply 100 Campaign discloses, among other claims, that Dannon Light & Fit Greek Yogurt contains sucralose, an artificial sweetener processed with added chlorine.

13. An example of the advertising, in the form of an "open letter" from Chobani on its website, is attached hereto as Exhibit A.

14. Chlorine is, in fact, added to the sucralose used in Dannon's products.

15. Sucralose is a disaccharide that is made from sucrose in a five-step process that selectively substitutes three atoms of chlorine for three hydroxyl groups in the sugar molecule.

16. The addition of these chlorine atoms converts sucrose (sugar) to sucralose, which is an inert, unreactive substance.

17. Indeed, it is the presence of chlorine that prevents sucralose from being broken down in the body for energy, thus making sucralose intensely sweet and yet non-caloric.

18. Consumers of wholesome products like Chobani's reduced calorie Greek Yogurt are concerned about artificial sweeteners in their food.

19. Chobani's Simply 100 Campaign provides consumers with accurate information to help them make more informed decisions about their food choices, including the choice between natural sweeteners and artificial sweeteners.

20. To further assist consumers, Chobani provides links in its online Simply 100 ads to additional information about sucralose from the Code of Federal Regulations, found on the United States Food and Drug Administration website.

21. The statements made by Chobani in the Simply 100 Campaign, including those set forth in Exhibit A and Paragraph 12, above, were and are true and accurate.

22. Upon information and belief, after the launch of the Simply 100 Campaign, a representative of Dannon disclosed to the press that claims made in the campaign were “untrue and irresponsible” and that Dannon intended “to pursue all available remedies to address Chobani’s misleading and irresponsible advertising.”

23. On or about 6:00 pm on January 7, 2016, counsel for Dannon sent a letter to Chobani via email accusing Chobani of making false, misleading, disparaging, or deceptive statements or claims in connection with the Simply 100 Campaign pursuant to the Lanham Act and/or New York New York state law, and demanded that Chobani immediately discontinue the Simply 100 Campaign.

24. There is an actual controversy between the parties as to whether the statements made by Chobani in the Simply 100 Campaign, including those set forth in Exhibit A and Paragraph 12, above, are false, misleading, disparaging, or deceptive.

**DANNON’S ACCUSATIONS BASED ON  
CHOBANI’S SUGAR COMPARISON CLAIMS**

25. Separate and apart from the allegations arising from the Simply 100 Campaign, Dannon has accused Chobani of unlawful conduct in relation to Chobani’s claims that its Greek Yogurt has significantly less sugar than regular yogurt.

26. Specifically, in August of 2015, the General Counsel of Dannon contacted the General Counsel of Chobani and asserted that the following claims on Chobani’s packaging and website were false and misleading:

- Chobani® Greek Yogurt has 40% less sugar than regular yogurt\*

\*Chobani® Greek Yogurt, fruit varieties, 15g sugar/5.3oz serving (average);  
regular fruit yogurt, 29g sugar /5.3oz.

- Chobani Simply 100® has 75% less sugar than regular yogurt\*

\*Chobani Simply 100® Greek Yogurt, 7g of sugar; regular fruit yogurt, 29g sugar per 5.3oz.

The disclosures accompanying the asterisks refer to information contained in the U.S. Department of Agriculture (“USDA”) National Nutrient Database for Standard Reference (the “USDA Nutrient Database” or the “Database”).

27. The USDA Nutrient Database is the preeminent source for food composition and nutrient information in the United States. It is updated frequently and is a reliable source for scientifically sound data about the nutrient composition of food. Public policy surrounding nutrition and health depends upon the Database and many government programs and initiatives, including but not limited to the federal school lunch program and the First Lady’s Let’s Move! Initiative, regularly use information from the Database. The USDA Nutrient Database provides the United States government’s benchmark data on nutrition and food composition, and advertisers commonly rely upon it to make benchmark comparisons. Indeed, Dannon itself has relied on the Database in making advertising claims and for other purposes.

28. The content of the disclosures in Paragraph 26, above, accurately reflect the information contained in the USDA Nutrient Database at the time that Chobani first made the above statements, and that information continues to appear in the Database today.

29. Chobani’s statements and accompanying disclosures, set forth in Paragraph 26, above, were true at the time that they were first made and are still true today.

30. While Chobani was confident that its position was correct, Chobani engaged in further discussions with Dannon in September and October of 2015 in a good faith effort to resolve the issues in dispute. Following those discussions, Chobani amended the language on its packaging and website to specify that the USDA Nutrient Database is the source of the information for the amount of sugar in regular yogurt.

31. Chobani's new claims, which currently appear on Chobani's website and will appear on Chobani's packaging imminently (as soon as the supply of prior packaging is exhausted), are as follows:

- Chobani® Greek Yogurt has 40% less sugar than regular fruit yogurt, based on USDA Data\*

\*Chobani® Greek Yogurt (excluding Plain), 13-17g sugar per 5.3oz (150g) serving; regular fruit yogurt, 29g sugar per 5.3oz (150g) serving based upon most recently reported USDA category data.

- Chobani Simply 100® has 75% less sugar than regular fruit yogurt, based on USDA data\*

\*Chobani Simply 100® Greek Yogurt, 6-8g of sugar per 5.3oz (150g) serving; regular yogurt, fruit variety, 29g sugar per 5.3oz (150g) serving based upon most recently reported USDA category data.

32. The content of the disclosures in Paragraph 31, above, accurately reflects the information contained in the USDA Nutrient Database at the time that Chobani first made the above statements, and that information continues to appear in the Database today.

33. Chobani's statements and accompanying disclosures, set forth in Paragraph 31, above, were true at the time that they were first made and are still true today.

34. Despite the truthfulness of Chobani's statements, Dannon continues to assert that the statements are false and misleading, and made that assertion as recently as December 16, 2015.

35. There is an actual controversy between the parties as to whether Chobani's statements and accompanying disclosures, set forth in Paragraphs 26 and 31, above, are false and/or misleading.

**COUNT I**

**DECLARATORY JUDGMENT THAT CLAIMS MADE IN CHOBANI'S SIMPLY 100  
CAMPAIGN ARE NOT FALSE, MISLEADING, DISPARAGING, OR DECEPTIVE  
PURSUANT TO THE LANHAM ACT**

36. Chobani repeats and realleges the preceding paragraphs of its Complaint.

37. An actual controversy exists as to whether claims made by Chobani in its Simply 100 Campaign constitute false, misleading, disparaging, or deceptive advertising pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

38. The claims made by Chobani in its Simply 100 Campaign were and are true.

39. A declaration is necessary and appropriate at this time to affirm that claims made by Chobani in its Simply 100 Campaign do not constitute false and/or misleading advertising under the Lanham Act.

40. Accordingly, Chobani seeks, pursuant to 28 U.S.C. §§ 2201 and 2202, a judgment from this Court declaring that claims made in the Simply 100 Campaign do not violate the Lanham Act.

**COUNT II**

**DECLARATORY JUDGMENT THAT CLAIMS MADE IN CHOBANI'S SIMPLY 100  
CAMPAIGN ARE NOT FALSE, MISLEADING, DISPARAGING, OR DECEPTIVE  
PURSUANT TO NEW YORK STATE LAW**

41. Chobani repeats and realleges the preceding paragraphs of its Complaint.

42. An actual controversy exists as to whether claims made by Chobani in its Simply 100 Campaign constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law.

43. The claims made by Chobani in its Simply 100 Campaign were and are true.

44. A declaration is necessary and appropriate at this time to affirm that claims made by Chobani in its Simply 100 Campaign do not constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law.

45. Accordingly, Chobani seeks, pursuant to 28 U.S.C. §§ 2201 and 2202, a judgment from this Court declaring that claims made in the Simply 100 Campaign do not constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law.

### **COUNT III**

#### **DECLARATORY JUDGMENT THAT CHOBANI'S SUGAR COMPARISON CLAIMS ARE NOT FALSE, MISLEADING, DISPARAGING, OR DECEPTIVE PURSUANT TO THE LANHAM ACT**

46. Chobani repeats and realleges the preceding paragraphs of its Complaint.

47. An actual controversy exists as to whether sugar comparison claims made by Chobani constitute false, misleading, disparaging, or deceptive advertising pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

48. The sugar comparison claims made by Chobani were true at the time they were and are true.

49. A declaration is necessary and appropriate at this time to affirm that Chobani's sugar comparison claims do not constitute false and/or misleading advertising under the Lanham Act.

50. Accordingly, Chobani seeks, pursuant to 28 U.S.C. §§ 2201 and 2202, a judgment from this Court declaring that Chobani's sugar comparison claims do violate the Lanham Act.

**COUNT IV**

**DECLARATORY JUDGMENT THAT CHOBANI'S SUGAR COMPARISON CLAIMS ARE NOT FALSE, MISLEADING, DISPARAGING, OR DECEPTIVE PURSUANT TO NEW YORK STATE LAW**

51. Chobani repeats and realleges the preceding paragraphs of its Complaint.

52. An actual controversy exists as to whether sugar comparison claims made by Chobani constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law.

53. The sugar comparison claims made by Chobani were and are true.

54. A declaration is necessary and appropriate at this time to affirm that Chobani's sugar comparison claims do not constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law.

55. Accordingly, Chobani seeks, pursuant to 28 U.S.C. §§ 2201 and 2202, a judgment from this Court declaring that Chobani's sugar comparison claims do not constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law.

**PRAYER FOR RELIEF**

**WHEREFORE**, for all the foregoing reasons, Chobani demands judgment as follows:

- A. Enter judgment in favor of Chobani on all counts;
- B. Declare that claims made in Chobani's Simply 100 Campaign do not constitute false, misleading, disparaging, or deceptive advertising pursuant to the Lanham Act;
- C. Declare that claims made in Chobani's Simply 100 Campaign do not constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law;
- D. Declare that Chobani's sugar comparison claims do not constitute false, misleading, disparaging, or deceptive advertising pursuant to the Lanham Act;

E. Declare that Chobani's sugar comparison claims do not constitute false, misleading, disparaging, or deceptive statements pursuant to New York state law;

F. Order that Dannon pay Chobani's attorneys' fees and costs as provided by 15 U.S.C. § 1117, N.Y. Gen. L. §§ 349 and 350, and/or pursuant to any applicable law;

G. Grant Chobani such other and further relief as the Court may deem just.

**JURY DEMAND**

Chobani demands a jury trial on all claims so triable.

Dated: January 8, 2016

Respectfully submitted,

s/ Julia Huston

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Julia Huston (Bar Roll No. 518555)  
Anthony E. Rufo (*pro hac vice* to be sought)  
Attorneys for Plaintiff  
Foley Hoag LLP  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2600  
Telephone: 617 832 1000  
Facsimile: 617 832 7000  
E-mail: [jhuston@foleyhoag.com](mailto:jhuston@foleyhoag.com)  
[arufo@foleyhoag.com](mailto:arufo@foleyhoag.com)

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# EXHIBIT A

# Did You Know Not All Yogurts Are Equally Good For You?

You think you are doing something good  
for yourself and your family

By buying yogurt instead of bad stuff

And then you find that the bad stuff\*

Is in your yogurt!



Look, there's **potassium sorbate**  
as a preservative in **Yoplait Greek 100**.

Potassium Sorbate? Really?  
That stuff is used to kill bugs.

There's **sucralose** used as a sweetener  
in **Dannon Light & Fit Greek!**



Sucralose? Why? That stuff has chlorine added to it!

If you want to do healthy things,  
know what's in your cup.

Chobani Simply 100® is the *only* 100-Calorie Greek Yogurt  
without a trace of any artificial sweeteners  
or artificial preservatives. \*\*

*Real fruit · Real nature · Real good*

Because to love this life is to live it naturally.

**CHOBANI**  
Love This Life™



\*Artificial Ingredients

\*\* Refers to nationally distributed brands

Yoplait Greek 100 is a registered trademark of Yoplait Marques société en nom collectif.  
Dannon Light & Fit is a registered trademark of The Dannon Company, Inc.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CHOBANI, LLC

(b) County of Residence of First Listed Plaintiff Chenango (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Julia Huston - Foley Hoag LLP
155 Seaport Boulevard, Boston, MA 02210-2600 (617) 832-1000

DEFENDANTS

THE DANNON COMPANY, INC.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Lanham Act, 15 U.S.C. s.1501 et. seq.

Brief description of cause: Declaratory judgment action regarding statements alleged to constitute false and/or misleading advertising

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/08/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Julia Huston

FOR OFFICE USE ONLY

RECEIPT # 0206-3535446 AMOUNT \$400 APPLYING IFP 3:16-cv-30 JUDGE DNH MAG. JUDGE DEP

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.