

**"PUSH-UP AND CREATE" PROMOTION  
OFFICIAL RULES / CONDITIONS OF ENTRY**

**NO PURCHASE NECESSARY. A PURCHASE OF ANY KIND WILL NOT INCREASE YOUR CHANCES OF WINNING. VOID WHERE PROHIBITED.**

**1. Promotion Overview:** The Dreyer's Grand Ice Cream, Inc. "Push-Up and Create" Promotion (the "Promotion") is a design contest for children. Entrants may submit an original design (each, a "Creation") that may be selected by a panel of judges for use on a series of Nestlé® Push-Up® tubes in the future. In addition, original designs can be awarded prizes based upon the judges' scores and voting by other children.

By participating in the Promotion persons fully and unconditionally agree to and accept these Official Rules and the decisions of the Sponsor and/or Administrator, which are final and binding in all matters related to the Promotion. The award of a prize is contingent upon complying with all conditions and fulfilling all requirements set forth herein.

**2. Eligibility:** The Promotion is open only to children who:

- Are legal residents of any of the fifty (50) United States or the District of Columbia;
- Are at least six (6) years old, but not more than twelve (12) years old at the time of entry or participation in voting; and
- Have secured the permission of their parent(s) or legal guardian(s) to participate in the Promotion.

Children who comply with all the eligibility rules shall be referred to as "entrant." Employees of Dreyer's Grand Ice Cream, Inc., Scholastic Inc. and any of their parent and affiliate companies, as well as the immediate family (spouse, parents, siblings and children, whether biological, adoptive, step or in-law) and household members of each such employee are not eligible. The Promotion is void where prohibited by law.

**3. Sponsor:** Dreyer's Grand Ice Cream, Inc., 5929 College Ave., Oakland, CA 94618 (the "Sponsor"). **Administrator:** Scholastic Inc., 557 Broadway, New York, NY 10012 (the "Administrator").

**4. Timing:** The Promotion begins on February 2, 2009 at 5:00 pm Eastern Time ("ET") and ends on January 31, 2010 at 12:00 pm ET (the "Promotion Period"). The Promotion Period consists of three (3) phases as set forth in the chart below. *\*Note: These times reflect whatever the current time will be in the Eastern time zone of the United States. Please account for daylight savings time if it is applicable in your place of residence.\** Sponsor's computer is the official time-keeping device for the Promotion.

<b><u>Phase</u></b>	<b><u>Starts at 5:00 pm ET</u></b>	<b><u>Ends at 12:00 pm ET</u></b>
Creation Phase	February 2, 2009	August 31, 2009
Judging and Verification Phase	September 1, 2009	October 14, 2009
Voting Phase	October 15, 2009	January 31, 2010

## 5. How to Enter:

Submitting a Creation: Creations may be submitted either online or by mail. Regardless of which method of entry is used, Creations must be submitted during the Creation Phase (see Section 4 for specific dates).

- (a) *Submitting a Creation Online:* To submit a Creation online, entrants must use the Promotion Entry Online Tool located at [www.scholastic.com/pushupandcreate](http://www.scholastic.com/pushupandcreate) (the "Promotion Website"). Instructions for use of the Promotion Entry Online Tool will be located on the Promotion Website. Entrants cannot submit Creations drawn by hand via uploading, e-mail, or other electronic means; only those Creations made using the Promotion Entry Online Tool can be submitted online. All online submissions must include the email address of the entrant's parent or legal guardian. An email will be sent to the parent or legal guardian with the option to opt-out their child from the Promotion.
- (b) *Submitting a Creation by Mail:* To submit a Creation by mail, an entrant must first obtain a Promotion Template. Promotion Templates are available on the Promotion Website, and may be downloaded and printed out to be completed. Some Promotion Templates will also be made available to select teachers as part of an in-school educational program. Entrants who create their designs on Promotion Templates should follow the instructions provided on the form regarding submission of their completed Creation, and mail their Promotion Template to the Administrator (at the address noted on the form). All Promotion Templates must be signed by the child's parent or guardian in order to be eligible.

**All Creations must be received by the Sponsor by the close of the Creation Phase for the Creation to be eligible for any prize.** Creations that are not received by the Administrator at the close of the Creation Phase will be deemed late. Sponsor and Administrator are not responsible for lost, late, incomplete, invalid, un-intelligible or misdirected Creations, which are void and will be disqualified.

Limit: Limit one (1) entry per person per day (per email address or per mailing address) up to a total of five (5) entries during the Creation Phase. For clarity, multiple entrants may use the same email address or mailing address as long as individual entrants have unique names. By submitting a Creation, you agree that it adheres to the Creation Guidelines and Content Restrictions as defined below (collectively, the "Guidelines and Restrictions") and that Sponsor, in its sole discretion, may remove your Creation and disqualify you from the Promotion if it believes, in its sole discretion, that your Creation fails to conform to these Guidelines and Restrictions in any way.

Multiple entrants are permitted to share the same email address, and it is permissible that entrant(s) share an email address with his/her parent(s) or legal guardian(s). Any attempt by any entrant to obtain more than the stated number of votes/entries or submit more than the stated number of Creations by using multiple/different email addresses, identities, registrations, logins, or any other methods will void that entrant's votes/entries/Creations and that entrant may be disqualified.

## 6. Creation Guidelines:

All Creations must:

- Be submitted by one of the following methods: online through use of the Promotion Entry Online Tool, or by mail as a completed Promotion Template;
- Follow all instructions as to design layout and format included with either the Promotion Entry Online Tool or the Promotion Template;
- Be original designs of the entrant; and
- Not have been submitted previously in a promotion of any kind or exhibited or displayed publicly (i.e., disclosed beyond your immediate circle of friends and family) through any means previously.

The Creation must not contain material that:

- Disparages any person, Sponsor and/or any of its or its affiliates' products, Administrator or any other entity affiliated with sponsoring, promoting or administering this Promotion;
- Violates or infringes another's rights, including but not limited to privacy, publicity or intellectual property rights, or that constitutes copyright infringement;
- Includes brand names or trademarks, other than the Push Up trademarks, logos and designs which the entrant has a limited license to use for the sole purposes of submitting a Creation into this Promotion;
- Includes photos, artwork or writing not created by the entrant;
- Is hateful, tortious, defamatory, slanderous, libelous, or obscene;
- Promotes bigotry, racism, sexism, hatred or harm against any group or individual or promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
- Is unlawful, in violation of or contrary to the laws or regulations in any state, province, territory or country where the Creation is created; and
- Depicts the use of a Nestlé® Push-Up® tube in an in-appropriate or dangerous manner.

**7. Copyrights:** SUBMITTING A CREATION IN THIS PROMOTION CONSTITUTES THE ENTRANT'S AND PARENT'S OR LEGAL GUARDIAN'S IRREVOCABLE ASSIGNMENT, CONVEYANCE AND TRANSFERENCE TO SPONSOR OF ANY AND ALL RIGHT, TITLE AND INTEREST IN THE CREATION INCLUDING, WITHOUT LIMITATION, ALL COPYRIGHTS AND WAIVER OF ALL MORAL RIGHTS IN YOUR CREATION FOR THE DURATION OF THE PROTECTION OF SUCH RIGHTS. IF SUCH AN ASSIGNMENT, CONVEYANCE OR TRANSFERENCE IS PROHIBITED BY LAW, THEN BY YOUR SUBMISSION OF A CREATION IN THIS PROMOTION, YOU AGREE TO GRANT TO SPONSOR A ROYALTY-FREE, PERPETUAL, EXCLUSIVE, SUB-LICENSABLE, WORLDWIDE LICENSE TO UTILIZE THE CREATION, INCLUDING USING THE CREATION AS THE BASIS OR PART OF ANY OTHER WORK, IN CONNECTION WITH ANY COMMERCIAL OR ADVERTISING PURPOSE, FOR THE DURATION OF THE PROTECTION OF THE CREATION.

Sponsor, and any party authorized by Sponsor, shall have the right to edit, adapt and publish any or all of the Creations or any of the content contained therein, and may use that content in any media, including but not limited to any form of product packaging, digital and electronic media, computer, audio and audiovisual media (whether now existing or hereafter devised), in any language, throughout the world, and in any manner, for trade, advertising, promotional, commercial, or any other purposes without attribution (where permissible by law) or compensation to the entrant, his/her successors or assigns, or any other person or entity. Sponsor and any Sponsor-authorized party, in their sole discretion, may feature any Creation submitted in this Promotion on their websites, in any promotional materials, whether related or unrelated to the Promotion or any subsequent promotion, and at any other location, whether physical or online, that such parties deem appropriate. Each entrant warrants to the Sponsor, Administrator, and/or each party authorized by Sponsor

pursuant to this section, that the Creation submitted by such entrant is an original work of the entrant which does not infringe any rights of any third party. A breach of the warranty set out in this condition will result in the entrant's Creation being invalid and entrant's potential disqualification from the Promotion. In addition, each entrant hereby indemnifies the Sponsor, Administrator, and/or its authorized parties against all loss, damages and costs incurred by them arising from that entrant's breach of the warranty set forth in this condition.

## **8. Winner Determination:**

a. Judging: At the close of the Creation Phase, all eligible Creations will be judged by a panel of qualified judges (the "Judges"), whose decisions as to the selection of the prize winners are final and binding in all matters. The Judges will evaluate the Creations using the following criteria (the "Judging Criteria"):

- 33% creativity and originality; and
- 67% suitability for use on a Nestlé® Push-Up® tube.

The three (3) top scoring Creations will be the potential Grand Prize Winners. The next fifty (50) top scoring Creations will be the potential First Prize Winners. In the event of tie, the entrant whose Creation the Judges determine to demonstrate the highest quality, using the judging criteria above, will be deemed either a potential Grand Prize Winner or First Prize Winner, as the case may be.

b. "Kids' Picks" Voting: At the opening of the Voting Phase, the potential First Prize Winners who are confirmed as First Prize Winners in accordance with Section 9 below will have their winning Creations posted on the Promotion Website. Visitors to the Promotion Website may vote for the five (5) First Prize Winner designs they think make the best Nestlé Push-Up tube designs. The five (5) First Prize Winners who receive the highest number of votes will also be awarded "Kids' Picks" Prizes. **Only First Prize Winners – Not Winners of the Grand Prize – Are Eligible For The "Kids' Picks" Prizes.**

Limit: Each visitor to the Promotion Website who wishes to vote on the First Prize Winners may vote up to five (5) times per day during the Voting Phase, but will not be allowed to vote for any one design more than one (1) time per day. In case of a tied vote, Sponsor, in its sole discretion, will determine the winners based on an application of the Judging Criteria set forth in Section 8(a), above. Use of any automated system to vote is prohibited and will result in disqualification of entrant's Creation and/or invalidation of all votes for that entrant.

**9. Winner Requirements:** During the Judging Phase, potential winners of either the Grand or First Prizes will be notified of their status by email, mail or phone. Each potential prize winner, and his/her parent(s) or legal guardian(s), will be required to sign and return to Administrator an Affidavit of Eligibility/Liability & Publicity Release (the "Affidavit") within ten (10) calendar days of notification. If any potential winner cannot be contacted, or if his/her parent or legal guardian fails to sign and return the applicable Affidavit or Declaration within the required time period (if applicable), that potential winner forfeits the applicable prize and his/her Creation(s) will be disqualified from further consideration. Failure to comply with these requirements and/or the Official Rules for any reason, return of prize notification or prize as un-deliverable or disqualification of any potential winner for any reason will result in forfeiture of applicable prize. If a potential prize winner forfeits a prize or is disqualified for any reason, the Judges will select the Creation that received the next

highest score to receive the prize. This course of action may continue until the particular prize is won and claimed, or for up to three (3) alternates (after which the applicable prize will remain un-awarded), whichever occurs first (if time permits). Acceptance of any prize shall constitute and signify the winner's (and his/her parent(s) and legal guardian(s)) agreement and consent to Sponsor's and Administrator's use of the winner's first name and last initial, city, state, likeness, photo, Creation and/or prize information in connection with the Promotion or with respect to Sponsor's brand, products, ad campaigns, worldwide, including the Internet, without limitation and without further payment or consideration, except where prohibited by law.

## **10. Prizes:**

a. Three (3) GRAND PRIZES: Each Grand Prize consists of 3 components:

(i) a \$1,000 gift card;

(ii) a \$2,500 donation to the recipient's school (to be used for the school's art program or similar program). If the recipient is not currently in school, the donation will be made to the school he/she last attended for at least one school year. If the recipient is home-schooled, the donation will be made to the local elementary school district to be used for after-school programs such as art classes; and

(iii) Having the winning Creation featured on *Nestlé® Push-Up®* tubes inside of *Nestlé Push-Up* multi-pack cartons. The tubes on which the Creation will appear will be for a limited production run, to be released sometime during 2010. Sponsor will provide additional details to Grand Prize Winners of the release of the *Nestlé Push-Up* tubes.

Approximate Retail Value ("ARV") for Grand Prize: \$3,500 each.

b. Fifty (50) FIRST PRIZES: Each First Prize will consist of a \$250 gift card and the opportunity to compete for a "Kids' Picks" Prize, as described in Section 8(b), above. ARV for First Prizes: \$250 each.

c. Five (5) "Kids' Picks" Prizes: Ten (10) t-shirts that feature the Entrant's design. Sizes, colors, and other features of the t-shirts to be determined by Sponsor in its sole discretion. ARV for "Kids' Picks" Prizes: \$150 each.

For All Prizes: Terms and conditions may apply to the gift cards. No substitution, assignment or transfer of prizes permitted, except by Sponsor, who reserves the right to substitute a prize or prize component with another of comparable or greater value. Prizes will be fulfilled approximately eight (8) to ten (10) weeks after the conclusion of the Promotion, unless otherwise agreed to by Sponsor. Any portion of any prize not accepted by winner shall be forfeited. Upon forfeiture for any reason as stated herein, no compensation shall be given. Prizes will only be delivered to street addresses within the 50 United States and the District of Columbia.

Limit: One (1) prize per entrant, except for those winners of First Prizes who also are winners of Kid Pick Prizes (who will receive one (1) First Prize and one (1) Kid Pick Prize). Total ARV of all Promotion Prizes: \$24,500

**11. Release: With respect to claims resulting from death or personal injury (in accordance with applicable law in those jurisdictions), by entering the Promotion,**

**entrant agrees to release and hold harmless Sponsor, Administrator, each of their related companies, their respective parents (if applicable) and affiliates and each of their respective officers, directors, employees, shareholders, and agents ("Released Parties") from and against any claim or cause of action arising out of participation in the Promotion or receipt or use of any prize whether or not caused by the negligence of the Released Parties.**

**12. General Conditions:** Sponsor reserves the right to cancel, suspend and/or modify the Promotion, or any part of it, if any fraud, technical failures or any other factor beyond Sponsor's reasonable control impairs the integrity or proper functioning of the Promotion, as determined by Sponsor in its sole discretion. Sponsor, in its sole discretion, reserves the right to disqualify any individual they find to be tampering with the entry process or the operation of the Promotion or to be acting in violation of these Official Rules or those of any other promotion or in an unsportsmanlike or disruptive manner. Any attempt by any person to deliberately undermine the legitimate operation of the Promotion may be a violation of criminal and civil law, and, should such an attempt be made, Sponsor and Administrator reserve the right to seek damages from any such person to the fullest extent permitted by law. Sponsor's and/or Administrator's failure to enforce any term of these Official Rules shall not constitute a waiver of that provision.

**13. Limitations of Liability:** In respect to all entrants, the Released Parties are not responsible for and shall be released from all liability resulting from: (1) any incorrect or inaccurate information, whether caused by entrant, printing errors or by any of the equipment or programming associated with or utilized in the Promotion; (2) technical failures of any kind, including, but not limited to malfunctions, interruptions, or disconnections in phone lines or network hardware or software; (3) unauthorized human intervention in any part of the entry process or the Promotion; (4) technical or human error which may occur in the administration of the Promotion or the processing of entries; (5) late, lost, un-deliverable, damaged or stolen mail; or (6) any injury or damage to persons or property which may be caused, directly or indirectly, in whole or in part, from entrant's participation in the Promotion or receipt or use or misuse of any prize (some jurisdictions do not allow the aforementioned limitations or exclusions of liability, so parts of this section may not apply). The Released Parties are not responsible for and are released from any liability with respect to misdirected or un-deliverable entries or for any technical problems, malfunctions of computer systems, servers, providers, hardware/software, lost or unavailable network connections or failed, incomplete, garbled or delayed computer transmission or any combination thereof. The Released Parties are not responsible for any typographical/other error in entries, selection announcement or for any liability for damage to any computer system resulting from participation in, accessing or downloading information in connection with this Promotion.

**14. Disputes:** Any dispute concerning any term of this Agreement will be resolved, if possible, first through direct negotiation in good faith. In the event that such good faith negotiation fails to resolve the dispute, then the dispute will be resolved through mediation unless these Official Rules provide for additional preliminary dispute resolution processes (for example, DMCA copyright infringement notifications pursuant to Section 15 below).

Except where prohibited, entrant agrees that any and all disputes, claims and causes of action arising out of or connected with this Promotion or any prize awarded shall be resolved individually, without resort to any form of class action, and exclusively by mediation through the auspices of the Judicial Arbitration and Mediation Services ("JAMS"), or any successor entity thereto. The mediation shall be conducted pursuant to the mediator's rules and procedures, except to the extent that the parties agree to modify those rules and procedures. When a demand for mediation is made, the parties will within 10

days jointly arrange for mediation through the auspices and pursuant to the mediation rules and procedures of JAMS in San Francisco, California; or through such other mediation service or mediator to which the parties agree. Any and all judgments and awards made by the mediator shall be limited to actual out-of-pocket costs incurred, including costs associated with entering this Promotion, but in no event attorneys' fees. Under no circumstances will entrant be permitted to obtain awards for, and entrant hereby waives all rights to claim, indirect, incidental and consequential damages and any other damages, other than for actual out-of-pocket expenses, and any and all rights to have damages multiplied or otherwise increased. Any negotiation or mediation which takes place pursuant to this Agreement shall be confidential and shall be treated as a compromise and settlement negotiation for purposes of the Federal Rules of Evidence and State rules of evidence.

Nothing in this Agreement will prevent Sponsor and/or Administrator from resorting to judicial proceedings if required by these Official Rules, for the limited purpose of seeking a preliminary injunction or equitable relief, or to avoid the barring of the claim under the applicable statute of limitations. In addition, resort by Sponsor and/or Administrator to negotiation or mediation pursuant to this Agreement shall not be construed under the doctrine of laches, waiver or estoppel to affect adversely the rights of either party to pursue any such judicial relief; provided, however, that irrespective of the filing of any such request for judicial relief, Sponsor and/or Administrator shall continue to participate in the dispute resolution proceedings required by this paragraph.

All issues and questions concerning the construction, validity, interpretation and enforceability of these Official Rules, or the rights and obligations of the entrant and Sponsor in connection with the Promotion, shall be governed by, and construed in accordance with, the laws of the State of California without giving effect to any choice of law or conflict of law rules (whether of the State of California or any other jurisdiction), which would cause the application of the laws of any jurisdiction other than the State of California.

**15. TELL-A-FRIEND STATEMENT.** On the Promotion Website, visitors may use the Tell-A-Friend mechanism to send links to the Promotion Website to friends and family. To use the Tell-A-Friend mechanism, visitors must know the email address of the person to whom they wish the link to be sent. Each email address put into the Tell-A-Friend mechanism will receive an email notifying them about the Promotion, but will not be stored or kept by Sponsor in any way. Visitors may only refer persons with whom they have an existing relationship. Utilizing the Tell-A-Friend mechanism will in no way affect the outcome of the Promotion.

## **16. DMCA Copyright Information**

Sponsor expressly disclaims any and all liability in connection with Creations. Sponsor does not permit copyright infringing activities and infringement of intellectual property rights on the Web Site, and Sponsor will remove all Creations if properly notified that such Creation infringes on another's intellectual property rights. Sponsor reserves the right to remove Creations without prior notice. Sponsor will also terminate an entrant's access to the Promotion if entrant is determined to be, in the sole discretion of Sponsor, a repeat infringer.

Infringement Notification Procedure. If you are a copyright owner or an agent thereof and believe that any Creation or other content infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing Sponsor's Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;
- Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Sponsor's designated Copyright Agent to receive notifications of claimed infringement is: Rosanna Neagle at the Sponsor's address. For clarity, only DMCA notices should go to the Copyright Agent; any other feedback, comments, requests for technical support, and other communications should be directed to Dreyer's Grand Ice Cream, Inc., Attention: Consumer Relations, 5929 College Avenue, Oakland, CA, 94618. In addition, questions about the Promotion may be directed to the following telephone number: 1-800-441-2525. Callers must be at least eighteen (18) years of age to call. Entrants, please have your parent or legal guardian make the call for you.

You acknowledge that if you fail to comply with all of the requirements of this Section 5(D), your DMCA notice may not be valid.

**Counter-Notice.** If an entrant has his/her Creation removed under the above take-down procedure, and believes that the Creation is not infringing, the entrant (or his/her parent(s) or legal guardian(s)) may send a counter-notice containing the following information to the Copyright Agent:

- Your physical or electronic signature;
- Identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
- A statement that you have a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content; and
- Your name, address, telephone number, and email address, a statement that you consent to the jurisdiction of the federal court in the Northern District of California, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Copyright Agent, Sponsor may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at Sponsor's sole discretion.

## **17. Winners List**

Grand Prize and First Prize winners will be posted on the Promotion Website on or about 10/15/09. Kids' Picks Prize winners will be posted on the Promotion Website on or about 03/01/10. Additionally, the winners list can be obtained through the mail by sending the request and a self-addressed, stamped envelop to Winners List, Push-Up and Create Promotion, P.O. Box 713, New York, NY 10013-0713.

## **18. Privacy Policy**

All Creations, and all information collected from entrants is subject to Sponsor's privacy policy, a copy of which can be found at [www.kids.icecream.com/privacy.html](http://www.kids.icecream.com/privacy.html)

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