

## Arbitration Award and Opinion Announced

The DQOA/DQOC is pleased to announce the Arbitrator's Award and Opinion that was issued on April 2, 2004 with respect to the Demand for Arbitration that the DQOA/DQOC filed against IDQ and ADQ.

### The Class Settlement Agreement in *Collins*

In 1994, a class action lawsuit was filed against IDQ and ADQ on behalf of Dairy Queen franchisees. In that lawsuit, the plaintiffs alleged that IDQ and ADQ violated federal and state antitrust laws, and breached the Dairy Queen franchise agreements, with respect to the manner in which IDQ/ADQ implemented the process of approving alternative sources of supply of approved products that are used in Dairy Queen restaurants. In 2000, the parties entered into the Class Settlement Agreement to resolve the issues raised in the lawsuit. The Class Settlement Agreement sets forth the rights and obligations of IDQ/ADQ, the Dairy Queen franchisees and the DQOA/DQOC with respect to the product approval process, and requires the parties to resolve disputes arising from the Class Settlement Agreement through arbitration.

### DQOA/DQOC's Demand for Arbitration and IDQ/ADQ's Counter-Demand

In June 2003, the DQOA/DQOC filed a Demand for Arbitration, alleging that IDQ/ADQ had breached the Class Settlement Agreement with respect to the manner in which it implemented the product approval procedures in a number of instances. IDQ/ADQ filed a Counter-Demand alleging that the DQOA/DQOC failed to demonstrate respect to IDQ/ADQ, in breach of the Class Settlement Agreement, by publishing certain franchisee letters and articles in *The BottomLine*. The parties filed briefs and presented evidence at hearing before the Standing Arbitrator in December 2003 and January 2004. On April 2, 2004, the Arbitrator issued an Award and Opinion holding that:

1. IDQ/ADQ breached the Class Settlement Agreement by failing to provide specification to Fabri-Kal (the DQOC-endorsed supplier of plastic containers) in the most detailed product specifications available.
2. IDQ/ADQ breached the Class Settlement Agreement by failing to apply reasonable product approval procedures in connection with the DQ Chocolate Sandwich Wafer provided by Cookie Kingdom.
3. IDQ/ADQ is required to sell Mr. Misty flavors to DQOA/DQOC-endorsed warehouses at the same price and on the same terms that IDQ/ADQ offers those flavors to IDQ-authorized warehouses, because there is no reasonable alternative manufacturer of those products.
4. IDQ/ADQ is required to sell Manufactured Novelties to DQOA/DQOC-endorsed warehouses at the same price and on the same terms that IDQ/ADQ offers to IDQ-authorized warehouses, because there is no reasonable alternative manufacturer of those products.

5. IDQ/ADQ breached the Class Settlement Agreement by failing to provide specifications for new products on a timely basis with respect to three new products.
6. “Branded” products are products identified by a trademark or other distinctive name to show quality of contents, which is in the usual form in which the product is presented to the consumer. For example, a whole Keebler® cookie is a branded product, but the altered form of that cookie that is used in a Blizzard® is not.
7. The Arbitrator declined to make an award on IDQ/ADQ’s Counter-Claim, stating that the DQOA/DQOC has a First Amendment right to free expression in *The BottomLine*.
8. The DQOA/DQOC’s claim that IDQ/ADQ should be required to sell the Ultimate Box to DQOA/DQOC-endorsed warehouses at the same price and on the same terms that IDQ/ADQ offers to IDQ-authorized warehouses (because there is no reasonable alternative manufacturer of those products) is moot because IDQ/ADQ is discontinuing the use of the Ultimate Box.
9. IDQ/ADQ did not act unreasonably in requiring Lyons-Magnus to sign a separate non-disclosure agreement for each topping submitted for IDQ/ADQ approval.
10. IDQ/ADQ did not unreasonably fail to advise the DQOC in a timely fashion regarding developments with respect to the Summer 2003 cup promotion.

The DQOA/DQOC is pleased with the outcome of the Arbitration and believe that the process produced a fair and equitable result. A full copy of the Award and Opinion and DQOA/DQOC’s Post-Arbitration Briefs will be posted on the DQOA website.