

**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY**

DAIRY QUEEN OPERATORS')	
ASSOCIATION, INC., a Minnesota)	
corporation,)	
)	COMPLAINT (DECLARATORY
Plaintiff,)	JUDGMENT)
)	
vs.)	
)	
AMERICAN DAIRY QUEEN)	
CORPORATION, a Delaware corporation,)	
)	
Defendant.		

I. INTRODUCTION

By and through this action, Plaintiff Dairy Queen Operators' DQOA, Inc. ("DQOA") seeks declarations that the franchise agreements between its members (hereinafter "Member Franchisees" or individually, "Member Franchisee") and Defendant American Dairy Queen Corporation ("ADQ"), and the applicable franchise statutes, prohibit ADQ from: (1) requiring Member Franchisees, or future transferees of Member Franchisees' franchise agreements, to convert the Member Franchisees' franchise agreements and restaurant properties into "DQ Grill & Chill®" franchise agreements and restaurants; (2) withholding consent to the attempted transfer of Member Franchisees' franchises upon the basis of the arbitrary standards contained within System Bulletin No. 161B; (3) precluding Member Franchisees from selling the food that Member Franchisees currently sell from their Dairy Queen franchised units; (4) requiring Member Franchisees who are selling non-system food items to sell a certain type or kind of food product; and (5) requiring Member Franchisees to sell Dairy Queen cakes (hereinafter "Cakes").

ADQ has, through its words and actions, threatened to require Member Franchisees, or future transferees of Member Franchisees' franchise agreements, to invest excessive amounts of money to convert the restaurant properties into DQ Grill & Chill® restaurants. DQ Grill & Chill® is an unproven franchise concept that is vastly different from the current Dairy Queen franchised units operated by Member Franchisees. ADQ also has announced to its franchisees, including without limitation the Member Franchisees, that ADQ will approve as franchisees only those purchasers who meet certain unreasonable standards. ADQ also has stated in public fora that it will disallow the sale of the food items currently sold by some of the Member Franchisees, and/or that it will require Member Franchisees who are selling hotdogs to sell only a certain all-beef hotdog approved by ADQ. ADQ also has announced that beginning in 2007, all franchisees, including Member Franchisees, will have to make the investment necessary to sell Cakes. Because of ADQ's statements regarding conversion, purchaser qualifications and the sale of certain food items, the Member Franchisees have been unable to transfer their franchise agreements and sell their units to otherwise willing purchasers, and have suffered, and will continue to suffer, irreparable damage through the loss of the businesses that Member Franchisees have developed and nurtured.

II. PARTIES

1. The DQOA is a non-profit corporation organized under the laws of Minnesota with its principal place of business in Chanhassen, Minnesota. The DQOA is comprised of approximately 1,649 franchisees of the Dairy Queen system, and its mission is to represent and help its members protect their rights in their franchise agreements with ADQ.

2. ADQ is a Delaware corporation with its principal place of business at 7505 Metro Boulevard, Minneapolis, Minnesota. ADQ and its predecessors have sold licenses and

franchises that allow the use of the Dairy Queen trademark and other associated marks from approximately 1940 to the present. ADQ's parent company is International Dairy Queen, Inc., which is itself a wholly-owned subsidiary of Berkshire Hathaway, Inc., which is located at 1440 Kiewit Plaza, Omaha, Nebraska.

3. DQOA has standing to bring this case because, as shown below, (a) its members (all of whom are Dairy Queen franchisees) have standing to sue in their own rights, (b) the interests that DQOA seeks to protect are germane to the organization's purpose, and (c) neither the claims presented nor the relief requested requires the participation of the individual Member Franchisees this action.

III. JURISDICTION AND VENUE

4. Jurisdiction and venue are appropriate in this Court pursuant to 735 Ill. Comp. Stat. 5/2-209 and 735 Ill. Comp. Stat. 5/2-101, as all parties do a significant amount of business within its jurisdiction, and the conduct complained of occurred, in part, within this jurisdiction.

IV. FACTS

The history of Dairy Queen

5. ADQ and its various predecessors have franchised Dairy Queen-brand restaurants since 1940, when the first Dairy Queen store opened in Joliet, Illinois.

6. "Dairy Queen" is one of the most well-recognized brands in the world, and has grown steadily since its introduction. Dairy Queen developed and/or franchised more than 100 stores by 1947, more than 1,400 stores by 1950, and more than 2,600 stores by 1955. Today, there are more than 5,700 Dairy Queen stores in the United States, Canada and more than 20 other foreign countries.

7. The growth of Dairy Queen as a brand has occurred in large part because of the sale of franchise agreements by ADQ and its predecessors. In fact, Dairy Queen is considered by many to be the original franchise system, whose success has led to today's burgeoning franchising activity.

8. Although Dairy Queen is known first, and primarily, for its sale of ice-cream treats, ADQ and its predecessors have authorized and/or allowed many of their franchisees to offer various food products and menus. Accordingly, ADQ and its predecessors have sold different types of franchises over the years that, depending on the franchise agreement itself, allowed a franchisee to sell (a) only ice-cream treats, or (b) a limited food menu and ice-cream treats, or (c) a more complete food menu (including hamburgers, hotdogs and limited side items) and ice-cream treats. These variations and permutations include such different concepts as Dairy Queen Brazier (with a full food menu), Dairy Queen/Limited Brazier (with a limited food menu), Dairy Queen Treat Center (only ice-cream treats), and several other units, including many franchises (including many of the Member Franchisees' units) that sell individually developed food menus (ADQ refers to these franchises as "non-system food" franchises).

9. Because of the evolution of the system as a whole and the development of many new and different concepts, ADQ and its predecessors have used several different franchise and development agreements over the last 60-plus years.

10. Despite the differences among these agreements, they have many similarities. Each one, for example, authorizes the franchisee to utilize specific trademarks and operating systems. As a result, it has been ADQ's practice upon the development of new concepts (such as Brazier) to not force franchisees of preexisting concepts to adopt the new trademarks, products and/or operating procedures inherent in the new concepts.

11. Another element common to all Dairy Queen franchises and concepts is the recognition of Dairy Queen as the source of high quality soft-serve ice cream and other ice-cream treats. In addition to its famous “soft-serve” ice cream, Dairy Queen has become known as the source of “Dilly Bars,” “Mr. Mistys,” “Buster Bars”, “Peanut Buster Parfaits,” “Pecan Mudslides” and the more recently introduced “Blizzard.” Accordingly, and as current ADQ executives have admitted, customers both in the United States and in other countries recognize Dairy Queen first as the source of ice-cream “treats.”¹

The franchise agreements

12. The Member Franchisees have entered into several types of franchise agreements with ADQ (or its predecessors).

13. Some Member Franchisees have entered into franchise agreements and (if applicable) amendments (hereinafter “Type A Franchise Agreements”) that contain certain pertinent provisions, some of which are contained in the attached Exhibit A.

14. Most notably, Type A Agreements: provide no expiration date (¶ 7); authorize franchisees to utilize the “Dairy Queen” trademarks then in existence (Amendment ¶ 1); and authorize franchisees to utilize buildings matching the blueprints attached to the agreements (¶ 5). In addition, the Type A Agreements state that ADQ will not unreasonably withhold its consent to any franchise transfer (Amendment ¶ 21), and that ADQ endorses the franchisee’s “present menu for the duration of his contract” (Amendment ¶ 5).

15. Some Member Franchisees have entered into franchise agreements and (if applicable) amendments (hereinafter Type C.1 Franchise Agreements) that contain certain pertinent provisions, some of which are contained in the attached Exhibit C.1.

¹In the January 31, 2005 issue of Nation’s Restaurant News, Michael Keller, Executive Vice President of Marketing and Research Development with IDQ, the parent company of ADQ, stated that the Dairy Queen brand has been “associated almost entirely with treats.”

16. Most notably, Type C.1 Agreements: provide no expiration date (¶ 3); authorize franchisees to “establish and operate a retail store under the name ‘Dairy Queen’” (¶ 1.1); and authorize franchisees to construct and equip their stores pursuant to ADQ’s then-approved standards (¶ 5.1). In addition, the Type C.1 Agreements state that ADQ will not unreasonably withhold its consent to any “replacement, reconstruction, addition or modification in building, equipment, or signage” (¶ 5.2), and/or to any franchise transfer (¶ 9.10), and that ADQ will make only “reasonable modifications” to the franchisee’s approved menu (¶ 6.2).

17. Some Member Franchisees entered into franchise agreements and (if applicable) amendments (hereinafter Type C.3 Franchise Agreements) that contain certain pertinent provisions, some of which are contained in the attached Exhibit C.3.

18. Most notably, Type C.3 Agreements: provide no expiration date (¶ 3); authorize franchisees to utilize the “Dairy Queen” trademarks then in existence (Recitals); and authorize franchisees to construct and equip their stores pursuant to ADQ’s approved specifications and standards “in effect at the time pertaining to design and layout of the building” (¶ 5.1). In addition, the Type C.3 Agreements state that ADQ will not unreasonably withhold its consent to any “replacement, reconstruction, addition or modification in building, equipment, or signage” (¶ 5.2), or to any franchise transfer (¶ 10.1), and that ADQ will make only “reasonable modifications” to the franchisee’s approved menu (¶ 6.1).

19. Some Member Franchisees have entered into franchise agreements and (if applicable) amendments (hereinafter “Type C.4 Franchise Agreements”) that contain certain pertinent provisions, some of which are contained in the attached Exhibit C.4.

20. Most notably, the Type C.4 Agreements: provide no expiration date (¶ 4); authorize franchisees to utilize the “Dairy Queen” trademarks then in existence for the purpose

of establishing and operating retail stores identified by those trademarks (Recitals and ¶ 2); and authorize franchisees to construct and equip their stores pursuant to ADQ's then-current specifications and standards (¶ 5.A). In addition, the Type C.4 Agreements state that ADQ will not unreasonably withhold its consent to any "replacement, reconstruction, addition or modification in building, equipment, or signage" (¶ 5.B), or to any franchise transfer (¶ 10.1).

21. Some Member Franchisees have entered into franchise agreements and (if applicable) amendments (hereinafter "Type D Franchise Agreements") that contain certain pertinent provisions, some of which are contained in the attached Exhibit D.

22. Most notably, the Type D Agreements: provide franchisees with 25-year terms and with unlimited options to renew (¶¶ 3, 25); authorize franchisees to utilize the "Dairy Queen" trademarks then in existence (Recitals) and to "establish and operate a 'Dairy Queen' store employing 'Dairy Queen' merchandising methods and using the trademark 'Dairy Queen' and said derivative marks" (¶ 1(a)). In addition, the Type D Agreements state that a franchisee must construct its store "in accordance with the plans furnished by" ADQ (¶ 7(c)), and that ADQ will not unreasonably withhold its consent to any franchise transfer (¶ 5).

23. Some Member Franchisees have entered into franchise agreements and (if applicable) amendments (hereinafter "Type E Franchise Agreements") that contain certain pertinent provisions, some of which are contained in the attached Exhibit E.

24. Most notably, the Type E Agreements: provide no expiration date (First Amendment ¶ 7); authorize franchisees to utilize the "Dairy Queen" trademarks then in existence (First Amendment ¶ 1); and authorize franchisees to construct and equip their stores pursuant to the blueprints attached the agreements (¶ 5). In addition, the Type E Agreements state that ADQ will not unreasonably withhold its consent to any franchise transfer (First Amendment ¶ 21).

25. Some Member Franchisees have entered into franchise agreements and (if applicable) amendments (hereinafter “Type G Franchise Agreements”) that contain certain pertinent provisions, some of which are contained in the attached Exhibit G.

26. Most notably, Type G Agreements: provide franchisees with 25-year terms and unlimited options to renew (¶¶ 3, 25); authorize franchisees to utilize the “Dairy Queen” trademarks then in existence (Recitals) and to “establish and operate a ‘Dairy Queen’ store employing ‘Dairy Queen’ merchandising methods and using the trademark ‘Dairy Queen’ and said derivative marks” (¶ 1(a)). In addition, the Type G Agreements state that the franchisee must construct its store “in accordance with the plans furnished by” ADQ (¶ 7(c)), and that ADQ will not unreasonably withhold its consent to any franchise transfer (¶ 5).

27. Some Member Franchisees have entered into franchise agreements and (if applicable) amendments (hereinafter “Type I Franchise Agreements”) that contain certain pertinent provisions, some of which are contained in the attached Exhibit I.

28. Most notably, Type I Agreements: provide no expiration date; authorize franchisees to utilize the “Dairy Queen” trademarks then in existence (¶ 1); and authorize a franchisee to construct a roof and appurtenances strictly in accordance with the plans provided by ADQ (Building Design Agreement ¶ 3).

29. As referenced above, the franchise agreements authorize the Member Franchisees to operate specific types of Dairy Queen franchise concepts that are different from the newly developed DQ Grill & Chill® franchise concept.

30. Although many of the franchise agreements preclude the Member Franchisees from transferring their franchise agreements without first receiving the written consent of ADQ,

each of those franchise agreements expressly provides that ADQ's "consent to transfer hereunder shall not be unreasonably withheld."

The creation of "DQ Grill and Chill®"

31. In the fall of 2000, ADQ undertook a project to "upgrade and improve" its food offerings. ADQ formed the "Project Octane" task force, which ADQ charged with the job of creating a vision for ADQ's future "food-centric" offerings that would serve as the unifying concept for future ADQ restaurants that offered food. The end result of Project Octane was the creation of the "DQ Grill & Chill®" building design and menu.

32. The DQ Grill & Chill® concept includes numerous changes from the previously existing Dairy Queen concepts that offer full food menus (e.g., Dairy Queen Brazier or non-system food).

33. For example, the required DQ Grill & Chill® design requires a much larger building than the previously required design for Dairy Queen Brazier or non-system food restaurants (the DQ Grill & Chill® floor plan must accommodate seating for more than 80 people), and the staffing requirement of DQ Grill & Chill® is much more stringent (an operator of a DQ Grill & Chill® must develop a staff of 40 to 45 employees, nearly twice as many employees as required to operate a Dairy Queen Brazier restaurant, in large part because the DQ Grill & Chill® restaurant requires a modified table service whereby customers place orders at the counter, sit down, and then wait for employees to serve the food at the tables). The new design also requires more refined interior and exterior accoutrements (such as fireplaces and brick facings).

34. As a result, the average net investment in a new DQ Grill & Chill® restaurant is approximately \$2 million, which is approximately three times more than is required to build a Dairy Queen Brazier or non-system food restaurant.

35. In addition, the required DQ Grill & Chill® menu is much different and more varied than the existing Dairy Queen food menus (including Brazier, Limited Brazier and non-system food concepts). The DQ Grill & Chill® menu includes a much more extensive offering of higher quality products, including turkey sandwiches, quesadillas, and quarter-pound hamburgers served on locally baked, high quality buns. As a result, the Guest Check Average at a Grill & Chill® is approximately \$7.50, as compared to a Guest Check Average of less than \$5.50 at most Brazier or non-system food locations.

36. In 2001, ADQ opened the first DQ Grill & Chill® restaurant, in Chattanooga, Tennessee. According to ADQ's most recent Uniform Franchise Offering Circular ("UFOC"), there were 76 DQ Grill & Chill® restaurants operating in the United States in December 2005.

37. As stated in the 2006 UFOC: "A DQ Grill & Chill® restaurant is a quick service food restaurant with indoor seating from which you will sell the full line of approved soft-serve, treat, food and drink menu items. For purposes of clarification, the DQ Grill & Chill® restaurant described in this Offering Circular will be operated under the DQ Grill & Chill® marks and other marks that ADQ may designate." (2006 UFOC at Item 1.)

38. The 2006 UFOC goes on to state that: "In connection with your authorized DQ Grill & Chill® restaurant, you are permitted to: (i) use ADQ's nationally recognized trademarks and service marks; (ii) obtain access to the distinctive operational and management attributes of the DQ Grill & Chill® system; (iii) participate in ADQ's national and regional sales promotion programs; and (iv) receive the benefits of association with a nationally recognized franchise

system, including various forms of training, opening and operational assistance (see Item 11).” (2006 UFOC at Item 1.)

39. Significantly, ADQ has created a new form of DQ Grill & Chill® franchise agreement that, unlike the franchise agreements currently in place, defines the “Restaurant” to mean “Licensee’s DQ Grill & Chill® Restaurant developed and operated pursuant to this Agreement.”

40. The DQ Grill & Chill® franchise agreement also defines “Trademarks” to include “the DQ Grill & Chill®” trademark.

41. The 2006 UFOC also states that it “plans over time to unify its food centric concepts under one building design and menu (which, as further described below, is the DQ Grill & Chill® design and menu), and unify its treat centric concepts under another design and menu (which, as further described below, is in test).” (2006 UFOC at Item 1.)

42. ADQ also has stated that since January 1, 2005, the “DQ Grill & Chill® building design and menu became the approved building design, menu and standard for new DQ® full food restaurants outside of Texas, and the approved building design for new Dairy Queen® restaurants in Texas.” (2006 UFOC at Item 1.)

43. ADQ also has stated that it “will continue to support all non-DQ Grill & Chill® restaurants and stores in the Dairy Queen® system,” (2006 UFOC at Item 1), and that ADQ will allow franchisees to use the DQ Grill & Chill® name and trademarks “only after the conversion to the DQ Grill & Chill® building design is completed and approved by ADQ.” (2006 UFOC at Item 1.)

44. Current DQ franchisees that desire to convert their stores into a Grill & Chill design and adopt the Grill & Chill menu must execute a DQ Grill & Chill® Amendment for Conversions.

45. That Amendment would expressly amend the definition of “Trademarks” in most current franchise agreements (including the franchise agreements in place between ADQ and Member Franchisees) to “include the ‘DQ GRILL & CHILL®’ related marks as ADQ may designate.”

46. Despite the increased investment required to develop a DQ Grill & Chill® restaurant, the DQ Grill & Chill® design and menu so far have not been generating enough revenues to provide investors with sufficient returns.

47. One possible reason for the failure of the DQ Grill & Chill® concept to generate sufficient additional revenues to cover the significant additional investment is the fact that the DQ Grill & Chill® concept represents an abrupt change to the Dairy Queen concept. For 60 years, customers of Dairy Queen have come to expect counter-service offerings of ice-cream treats and certain food items. Despite the myriad of Dairy Queen formats, customers have come to expect and accept Dairy Queen stores as “fast food” restaurants that specialize in soft-serve ice-cream treats. ADQ’s new DQ Grill & Chill® concept, on the other hand, is not a “fast food” restaurant that specializes in soft-serve ice-cream treats. Rather, the DQ Grill & Chill® concept is a “fast casual” restaurant that provides a wide variety of food offerings more akin to a “Chili’s” restaurant. The result has been that customers unaccustomed to the higher cost and slower speed of DQ Grill & Chill® restaurants have not responded in numbers sufficient to cover the significant overhead requirements.

48. Prospective franchisees have been understandably hesitant to invest millions of dollars in an unproven restaurant design and menu that relies on a wholesale re-invention of the Dairy Queen brand. Existing franchisees such as Member Franchisees, on the other hand, have operated successfully under their franchise agreements for years.

49. A conversion to a DQ Grill & Chill® restaurant and design would require, in most cases, a complete teardown of the current restaurant, or a move to a new location – essentially requiring existing franchisees to start over in new and different businesses.

50. ADQ certainly has the authority to develop whatever kind of brand or restaurant it desires, but it cannot force Member Franchisees to convert their franchises into a concept quite different from what Member Franchisees acquired through their franchise agreements.

The dispute with franchisees regarding DQ Grill & Chill®

51. Recent statements from ADQ have made it clear that ADQ’s goal is to force existing franchisees, including the Member Franchisees, to convert their franchises into one of two models: (a) the food-centric DQ Grill & Chill® concept, or (b) the treat-centric “Treatworks®” concept (the first “Treatworks®” store opened in July 2005 in Tarentum, Pa., and the Treatworks® concept remains in the test phase).

52. ADQ first communicated its plans in a February 2004 memorandum written by Chuck Chapman, ADQ’s Executive Vice President of Development. In that memorandum, ADQ explained its plans for “Concept Evolution” (i.e., the unification of Dairy Queen’s brand and trademarks under two menus and designs) by making the following telling statements:

- “[Chuck Mooty – President and CEO of ADQ] stated that he would like to have one food-centric concept and one treat-centric concept. When we talk about concept evolution, we are talking about the path to which existing stores will move toward either the food-centric design and menu or the treat-centric design and menu.” (Emphasis added.)

- “We plan to unify our food-centric concepts under one building design and menu, and unify our treat-centric concepts under another building design and menu.”
- “Effective January 1, 2004, the building design component of the *Grill & Chill* test has been concluded. As a result, the *Grill & Chill* building design will be the approved building design and standard for DQ food restaurants (new build, re-franchise, replacement locations, relocations, conversions, and facilities upgrades).” (Emphasis added.)
- “ADQ realizes that we will not re-image our food system overnight; rather, our food system, and each unit within the food system will evolve toward the *DQ Grill & Chill*® image over time. It is anticipated that we may be looking at ten or more years to conclude this process.”
- The 2006 UFOC states that “ADQ plans over time to unify its food centric concepts under one building design and menu (which, as further described below, is the DQ Grill & Chill® design and menu), and unify its treat centric concepts under another design and menu (which, as further described below, is in test).” (2006 UFOC at Item 1.)

53. Such statements (and others addressed below) have made it impossible for Member Franchisees to realize the full value of their franchises upon transfer.

54. A Member Franchisee recently executed a purchase agreement with a prospective purchaser of the franchise. After the prospective purchaser submitted the appropriate paperwork to ADQ and completed the necessary testing and in-store training, ADQ provisionally approved the prospective purchaser as a Dairy Queen franchisee. The prospective purchaser next attended the Dairy Queen Training Center and ServSafe Course, during which time ADQ provided the prospective purchaser with a copy of the “Concept Evolution” memo.

55. In addition to the statements within the memorandum as outlined above, the prospective purchaser became particularly concerned with the following significant statements within that “Concept Evolution” memo:

- “As of January 2004 the RWB classic image is no longer authorized for DQ/B new stores (new replacement or relocation) or conversions. ... Note that for the foreseeable future, replacement elements will be available for

those restaurants that need to complete repair and maintenance items to their RWB facilities. The RWB design is still currently available (although it will be replaced by the Cornerstone design when finalized) for Dairy Queen/Limited Brazier and DQ soft serve—only free standing buildings.”

- “Please note that ADQ does need to reserve its right to enforce the remodeling or modernization requirements that exist in various franchise agreements. ADQ may in the future implement a modernization program based on these requirements.”

56. Although the “Concept Evolution” memo concluded with a statement that future transferees would not be required to sign an agreement stating that any future transfer must include a conversion to a *DQ Grill & Chill*® restaurant, the memo stated that:

If your existing Franchise Agreement contains remodeling or modernization requirements that relate to a transfer, ADQ may, in the future, implement a program based on these requirements.

57. The Member Franchisee’s franchise agreement includes the following “modernization” requirement:

5.5 Modernization or Replacement at Time of Transfer. Each and every transfer of any interest in this Agreement or business conducted hereunder governed by Paragraph 10 is expressly conditioned upon Licensee promptly effecting such items of modernization, refurbishing and/or replacement of building, equipment and signage as may be reasonably necessary to permit the same to conform to the standards then prescribed by Company for similarly situated new “Dairy Queen” store operations. Licensee acknowledges and agrees that the requirements of this Paragraph 5.5 are both reasonable and necessary to insure continue public acceptance and patronage of the “Dairy Queen” system and to avoid deterioration or obsolescence in connection with the operation of the business.

58. As a result of its review of the “Concept Evolution” memo and other communications (or non-communications) with ADQ, the prospective purchaser decided that it no longer wanted to acquire the Member Franchisee’s franchise. The prospective purchaser told the Member Franchisee that ADQ left the prospective purchaser with the impression that the prospective purchaser would have to convert the Franchise to a *DQ Grill & Chill*® some time

within the next 10 years, or, at the very least, upon any subsequent transfer, renewal, relocation, and/or facility upgrade.

59. Because of these and other statements of ADQ's intent (including a statement in the 2006 UFOC that "ADQ is currently in the process of continuing the concept evolution with the Dairy Queen® system"), existing Dairy Queen franchisees, through DQOA, have requested clarification that ADQ does not intend to require the current Dairy Queen franchisees to convert their franchises into DQ Grill & Chill® franchises upon the transfer, renewal, relocation, and/or upgrade of their existing facilities. ADQ's response was that it "is not in a position to make broad commitments beyond what has already been communicated."

60. Thus, ADQ has implied that current franchisees that own and operate Dairy Queen restaurants that offer food (i.e., "food-centric" restaurants) will have to convert their stores into DQ Grill & Chill® franchises upon transfer, renewal, relocation, and/or upgrades of their existing Dairy Queen facilities.

61. Because such a position threatens the value of the Member Franchisees' franchises, DQOA seeks a declaration that the Franchise Agreements and/or the Minnesota Franchise Act do not authorize ADQ to require Member Franchisees to convert their Dairy Queen franchises into DQ Grill & Chill® franchises.

The onerous transfer requirements

62. Although ADQ has reserved for itself the right to approve prospective purchasers of an existing franchise pursuant to a set of objective criteria, it has, as stated in the franchise agreements, committed itself to not unreasonably withhold its consent to any transfer of the franchise agreements by Member Franchisees.

63. For years ADQ exercised its commitment to not unreasonably withhold its consent to transfers by evaluating a prospective purchaser of an existing franchise on the grounds of whether the prospective purchaser had the ability and/or financial wherewithal to operate the particular franchise that the prospective purchaser was applying to acquire.

64. In April 1997, ADQ issued System Bulletin #161A, which stated that ADQ was changing its prior course of dealing related to transfers and that “[p]articular scrutiny is needed at the time of transfer of the franchise.” Most notably, ADQ began requiring each prospective purchaser to successfully complete ADQ’s training-school program, including ServSafe certification, prior to the prospective purchaser taking control of the franchise. In addition, ADQ noted that “[f]or some, meeting reasonable standards” will require “significant upgrades and improvements” to the facility at the time of transfer.

65. Most importantly, however, ADQ abandoned its prior practice of evaluating each prospective purchaser on the basis of whether the prospective purchaser had the ability and/or financial wherewithal to operate the particular franchise that the prospective purchaser was attempting to buy, in favor of the practice of evaluating the prospective purchaser on the basis of arbitrary system-wide criteria – most notably, arbitrary financial requirements related to net worth (\$75,000) and liquid assets (\$25,000). These arbitrary requirements are unreasonable because standards used to measure the capability of purchasers of new stores are not applicable to measure the capability of purchasers of existing stores. In addition, these arbitrary requirements often foreclose employees and/or family members from buying into existing businesses.

66. In November 2002, ADQ issued System Bulletin #161B, which superseded System Bulletin #161A, and which stated that ADQ “has now put in place procedures for

transfer of a franchise that closely mirror the requirements and goals set for new ‘Dairy Queen’ Restaurants in the ‘Dairy Queen’ system.” To put it another way, ADQ began to evaluate prospective purchasers of existing stores on a nearly identical basis to that used to evaluate prospective franchisees of new franchises, which currently are limited to the more extensive and expensive DQ Grill & Chill® and Treatworks® concepts.

67. In addition to the new requirements contained in System Bulletin #161B, ADQ now requires prospective purchasers of existing franchises to pass a Basic Skills Test, to submit to a background check, and to meet increased financial requirements of net worth of the greater of 50% of the total purchase price of the transaction or \$75,000, liquid assets totaling the greater of 20% of the total purchase price of the transaction or \$30,000, and operating capital (separate from liquid assets) totaling the greater of \$25,000 or 33% of fixed and semi-variable expenses, including debt service and manager salary not to exceed \$100,000.

68. The Basic Skills Test is not reasonable because it does not reasonably identify those skills required to operate a Dairy Queen franchise. And the background check is unreasonable because ADQ has not identified what facts uncovered by such a background check will be used to eliminate prospective franchisees.

69. Because ADQ’s unreasonable transfer requirements threaten the ability of Member Franchisees to transfer their franchises, DQOA seeks a declaration that the franchise agreements and/or the applicable franchise statutes do not authorize ADQ to place such arbitrary requirements upon prospective purchasers of Member Franchisees’ franchises.

The regulation and/or elimination of non-system food

70. Despite the fact that their franchise agreements either prohibited the sale of non-sanctioned food products or were silent about the sale of non-sanctioned food products, many

Member Franchisees over the last several decades have supplemented their offering of Dairy Queen soft-serve products with non-sanctioned food products (hereinafter “non-system food”).

71. In many cases, ADQ or its predecessor actually suggested that the Member Franchisees sell non-system food.

72. ADQ or its predecessor knew that Member Franchisees have been selling non-system food in contravention of the franchise agreements in place.

73. Many Member Franchisees displayed signs that indicated they were selling food different from that authorized by the applicable franchise agreements.

74. Although the applicable franchise agreements stated that Member Franchisees could sell “only such products as from time to time are designated and approved by Company for sale by ... the ‘Dairy Queen’ Store,” ADQ never has made any previous attempts to stop Member Franchisees from selling the aforementioned non-system food items.

75. ADQ recently has stated that it has the legal right to control the contents of those non-system food menus and/or preclude Member Franchisees from selling non-system food items, and that ADQ eventually will enforce that right.

76. More specifically, ADQ in April 2006 stated that any franchisees, including Member Franchisees who are selling hotdogs as part of their non-system food menus, must use only a certain brand of all-beef hotdog even though ADQ does not have any contractual right to control the non-system food menus.

77. Faced with this uncertainty regarding the continued ability to sell products that have represented significant portions of their revenues, certain Member Franchisees have been unable to transfer their franchises.

78. Because ADQ's assertion that it has a legal right to preclude Member Franchisees from selling non-system food has threatened and will threaten the value of the Member Franchisees franchises, DQOA seeks a declaration that the Franchise Agreements and/or the Minnesota Franchise Act do not authorize ADQ to prohibit Member Franchisees that have been selling non-system food from selling non-system food.

ADQ's requirement that franchisees sell cakes

79. ADQ recently announced that starting in 2007, it will require all franchisees (including Member Franchisees) to offer for sale Cakes, which will be made almost entirely of Dairy Queen soft-serve ice cream.

80. The additional cost to franchisees, including Member Franchisees, to prepare, display and sell Cakes will be a minimum of \$10,000 per store. Franchisees (including Member Franchisees) will be required to install a specific type of freezer and display case that must include a compressor. Franchisees with smaller walk-up type Dairy Queen stores will have to initiate significant and expensive remodeling, including the removal and rebuilding of walls and other structures to accommodate the compressor and other equipment.

81. In addition, ADQ will require each franchisee (including each Member Franchisee) to hire and/or train a cake decorator to help prepare the Cakes.

**ADQ's requirement that franchisees install
Hot Shot Food Preparation system**

82. ADQ introduced the Hot Shot Food Preparation system to the ADQ system in approximately 1995. Since that time, the addition of the Hot Shot Food Preparation system has been voluntary.

83. When ADQ introduced the *GrillBurger* in 2004, however, it announced for the first time that it would make the Hot Shot Food Preparation System the required preparation procedure for all *Dairy Queen/Brazier* locations effective January 1, 2007.

84. In a June 14, 2004 memorandum explaining this decision, ADQ stated that its reasons for placing the deadline so far into the future was “to provide franchise operators time to prepare their restaurants for any changes that may need to be made to their kitchen layout, and to plan for the expense of adding the required equipment.”

85. Moreover, ADQ stated that a second reason was to wait until ADQ had completed its treat-centric concept testing so that those franchisees who did not want to make the significant investment in the Hot Shot Food Preparation system would have the option of converting their restaurants into a treat-centric location.

86. In approximately March 2006, ADQ sent a memorandum to all franchisees stating that pursuant to the objective to “have a standardized and unified food product preparation procedure,” ADQ had adopted “the Hot Shot Food Preparation system ... for all *DQ/Brazier* locations, effective January 1, 2007.”

87. The Hot Shot Food Preparation system not only will require franchisees to not only acquire expensive food-preparation equipment, it also will require most franchisees to substantially alter their facilities at significant cost.

ADQ’s requirement that all franchisees have the ability to accept credit, debit and gift cards

88. On approximately May 15, 2006, ADQ announced in a memorandum that “all locations in the *DQ* system will be required to have the ability to accept credit, debit and gift cards as a form of payment by October 1, 2007.”

89. In this same memorandum, ADQ strongly encourages all franchisees to utilize a program that ADQ negotiated with First Data Corporation (“FDC”) for the credit-card portion of the program, and ADQ is requiring franchisees to utilize FDC for the gift-card program. ADQ states that if the franchisee chooses a supplier other than FDC for the credit-card portion of the program, the franchisee still will be required to have an FDC terminal to process gift cards, and that “[i]t is possible that this dual terminal approach will be more expensive and require more space and training.”

90. Some of the costs associated with the program include programming fees for customer-owned equipment, deployment fees for customer-owned equipment, equipment charges, lease charges, credit-card charges of between 1.55% and 1.65% plus \$0.04, as well as computer access of charges of between \$0.020 and \$0.022.

91. ADQ also announced that it will begin rolling out the gift-card program in October 2006.

V. LEGAL CLAIMS

COUNT I **Breach of contract**

The DQOA incorporates and realleges the foregoing as fully set forth herein.

92. Pursuant to terms of the Member Franchisees’ franchise agreements, ADQ authorized the Member Franchisees to operate franchises pursuant to the System and Trademarks that then made up the Dairy Queen franchise system.

93. Implied in the franchise agreements is the covenant of good faith and fair dealing, which requires that the parties deal with each other honestly and in good faith, observe reasonable commercial standards of fair dealing in the trade, and refrain from doing anything

that has the effect of destroying or injuring either party's right to receive the benefit of his contract.

94. At all times relevant hereto, Member Franchisees have fulfilled in all material respects their obligations as franchisees under the Franchise Agreements.

95. By its conduct, including but not limited to the following, ADQ materially breached its contractual duties and/or violated the implied covenant of good faith and fair dealing implied by law by announcing that each Member Franchisee:

- Cannot renew its franchise agreement without first converting its franchise into a completely different concept – a DQ Grill & Chill® franchise ;
- Cannot relocate its franchise without first converting its franchise into a DQ Grill & Chill® franchise;
- Cannot transfer its franchise agreement without first converting its Franchise into a DQ Grill & Chill® franchise;
- Cannot upgrade its restaurant facility without first converting its Franchise into a DQ Grill & Chill® franchise.

96. By its conduct, including but not limited to the following, ADQ also materially breached its contractual duties and/or violated the implied covenant of good faith and fair dealing implied by law by imposing arbitrary requirements upon prospective purchasers of each Member Franchisee's franchise, which include, but are not limited to:

- A net worth (exclusive of residence and personal items) totaling the greater of 50% of the total purchase price of the transaction or \$75,000;
- Liquid assets totaling the greater of 20% of the total purchase price of the transaction or \$30,000;

- Operating capital (separate from liquid assets) totaling the greater of \$25,000 or 33% of fixed and semi-variable expenses, including debt service, and manager salary not to exceed \$100,000;
- Passage of a Basic Skills Test;
- Submission to a background check.

97. By its conduct, including but not limited to the following, ADQ also materially breached its contractual duties and/or violated the implied covenant of good faith and fair dealing by threatening to force each Member Franchisee (or each Member Franchisee's successor) that has been selling non-system food to discontinue the sale of non-system food.

98. By its conduct, including but not limited to the following, ADQ also materially breached its contractual duties and/or violated the implied covenant of good faith and fair dealing by threatening to force each Member Franchisee (or each Member Franchisee's successor) that currently sells hotdogs to begin selling only a certain brand of all-beef hotdogs.

99. By its conduct, including but not limited to the following, ADQ also materially breached its contractual duties and/or violated the implied covenant of good faith and fair dealing by threatening to force each Member Franchisee (or each Member Franchisee's successor) to begin selling Cakes, and to make the investment necessary to sell Cakes, including, without limitation, substantial modification of the store facility and the hiring of additional skilled employees.

100. By its conduct, including but not limited to the following, ADQ also materially breached its contractual duties and/or violated the implied covenant of good faith and fair dealing by threatening to force each Member Franchisee (or each Member Franchisee's successor) to redesign his or her restaurant to accommodate the Hot Shot Food Preparation system.

101. By its conduct, including but not limited to the following, ADQ also materially breached its contractual duties and/or violated the implied covenant of good faith and fair dealing by forcing each Member Franchisee (or each Member Franchisee's successor) to acquire the equipment and incur the cost of implementing a credit-card and gift-card payment program.

102. ADQ's breaches as referenced above have caused or will cause irreparable harm by (1) conditioning the ability of each Member Franchisee to renew, relocate, transfer, and/or upgrade its franchise upon the conversion of the franchise into a DQ Grill & Chill® franchise, (2) placing unreasonable requirements upon prospective purchasers of each Member Franchisee's franchise; (3) requiring each Member Franchisee who sells hotdogs to sell only a certain brand of all-beef hotdogs; (4) placing in doubt the ability of each Member Franchisee to sell non-system food; (5) forcing each Member Franchisee to begin selling Cakes; (6) by forcing each Member Franchisee to redesign its restaurant to accommodate the Hot Shot Food Preparation system; and (7) by forcing each Member Franchisee to acquire the equipment and incur the cost of implementing a credit-card and gift-card payment program.

103. As a result of ADQ's breaches, each Member Franchisee will suffer irreparable harm.

104. The DQOA, therefore, requests that this Court issue a preliminary and permanent injunction enjoining ADQ from taking or continuing to take the aforementioned actions.

COUNT II
Violation of the Minnesota Franchise Act

The DQOA incorporates and realleges the foregoing as fully set forth herein.

105. Under the Minnesota Franchise Act, Minn. Stat. § 80C.01 *et seq.*, a franchise is a contract or agreement, express or implied, between two or more persons (a) by which a franchisee is granted the right to engage in the business of offering or distributing goods or

services using the franchisor's trade name or trademark; (b) in which the franchisor and the franchisee have a community of interest in the marketing of goods or services at wholesale or retail; and (c) for which the franchisee pays, directly or indirectly, a franchise fee.

106. Each Member Franchisee has a franchise under the Minnesota Franchise Act because: (a) ADQ granted each Member Franchisee the right to engage in the business of offering and distributing goods and services using ADQ's trademarks; (b) each Member Franchisee and ADQ have a community of interest in the marketing of goods and services at retail; and (c) each Member Franchisee pays ADQ a franchise fee.

107. The Minnesota Franchise Act applies to each Member Franchisee because ADQ (or its predecessors) sold the franchise to each Member Franchisee in Minnesota, and, in the case of some Member Franchisees, their franchises are located in Minnesota and continue to do business in Minnesota.

108. Pursuant to the Minnesota Franchise Act, no person may terminate or cancel a franchise except for "good cause."

109. Pursuant to the Minnesota Franchise Act, it is unfair and inequitable for a franchisor to unreasonably withhold consent to an assignment, transfer, or sale of a franchise whenever the franchisee to be substituted meets the present qualifications and standards required of the franchisees of the particular franchisor.

110. Pursuant to the rules that accompany the Minnesota Franchise Act, no franchisor may impose on a franchisee by contract or rule any standard of conduct that is unreasonable.

111. ADQ violated the Minnesota Franchise Act by announcing that each Member Franchisee:

- Cannot renew its Franchise Agreement without first converting the franchise into a completely different concept – a DQ Grill & Chill® franchise;
- Cannot relocate the franchise without first converting the franchise into a DQ Grill & Chill® franchise;
- Cannot transfer the Franchise Agreement without first converting the franchise into a DQ Grill & Chill® franchise;
- Cannot upgrade the franchise without first converting the franchise into a DQ Grill & Chill® franchise.

112. ADQ also violated the Minnesota Franchise Act by imposing arbitrary requirements upon prospective purchasers of each Member Franchisee's franchise, which include, but are not limited to:

- A net worth (exclusive of residence and personal items) totaling the greater of 50% of the total purchase price of the transaction or \$75,000;
- Liquid assets totaling the greater of 20% of the total purchase price of the transaction or \$30,000;
- Operating capital (separate from liquid assets) totaling the greater of \$25,000 or 33% of fixed and semi-variable expenses, including debt service, and manager salary not to exceed \$100,000;
- Passage of a Basic Skills Test;
- Submission to a background check.

113. By its conduct, including but not limited to the following, ADQ also violated the Minnesota Franchise Act by threatening to force each Member Franchisee (or each Member

Franchisee's successor) that has been selling non-system food to discontinue the sale of non-system food.

114. By its conduct, including but not limited to the following, ADQ also violated the Minnesota Franchise Act by threatening to force each Member Franchisee (or each Member Franchisee's successor) that currently sells hotdogs to begin selling only a certain brand of all-beef hotdogs.

115. By its conduct, including but not limited to the following, ADQ also violated the Minnesota Franchise Act by threatening to force each Member Franchisee (or each Member Franchisee's successor) to begin selling Cakes, and to make the investment necessary to sell Cakes, including, without limitation, substantial modification of the store facility and the hiring of additional skilled employees.

116. By its conduct, including but not limited to the following, ADQ also violated the Minnesota Franchise Act by threatening to force each Member Franchisee (or each Member Franchisee's successor) to redesign his or her restaurant to accommodate the Hot Shot Food Preparation system.

117. By its conduct, including but not limited to the following, ADQ also violated the Minnesota Franchise Act by threatening to force each Member Franchisee (or each Member Franchisee's successor) to acquire the equipment and incur the cost of implementing a credit-card and gift-card payment program.

118. The Minnesota Franchise Act provides that a franchisor that violates any provision of the Act "shall be liable to the franchisee or subfranchisor who may sue for damages caused thereby, for rescission, or other relief as the court may deem appropriate." Minn. Stat. § 80C.17, subd. 1. The Minnesota Franchise Act also authorizes a franchisee to file suit to "recover

the actual damages sustained by plaintiff together with costs and disbursements plus reasonable attorney's fees." Minn. Stat. § 80C.17, subd. 3. The Minnesota Franchise Act also provides that a violation of the statute "is enjoined by a court of competent jurisdiction." Minn. Stat. § 80C.14, subd. 1.

119. ADQ's violations as referenced above have caused or will cause irreparable harm by (1) conditioning the ability of each Member Franchisee to renew, relocate, transfer, and/or upgrade its franchise upon the conversion of the franchise into a DQ Grill & Chill® franchise, (2) placing unreasonable requirements upon prospective purchasers of each Member Franchisee's franchise; (3) requiring each Member Franchisee who sells hotdogs to sell only a certain brand of all-beef hotdogs; (4) placing in doubt the ability of each Member Franchisee to sell non-system food; (5) forcing each Member Franchisee to begin selling Cakes; (6) by forcing each Member Franchisee to redesign his or her restaurant to accommodate the Hot Shot Food Preparation system; and (7) to acquire the equipment and incur the cost of implementing a credit-card and gift-card payment program.

120. The DQOA, therefore, requests that this Court issue a preliminary and permanent injunction enjoining ADQ from taking or continuing to take the aforementioned actions.

COUNT III
Violation of individual franchise statutes/de facto termination

The DQOA incorporates and realleges the foregoing as fully set forth herein.

121. Member Franchisees in Arkansas (Ark. Code Ann. §§ 4-72-201 to 210), California (Cal. Bus. & Prof. Code §§ 20000-20043), Connecticut (Conn. Gen. Stat. Ann. §§ 42-133e to 133h), Delaware (Del. Code. Ann. tit. 6, §§ 2551-2556), Hawaii (Haw. Rev. Stat. §§ 482E-1 to 12), Illinois (815 Ill. Comp. Stat. §§ 705/1 et seq.), Indiana (Ind. Code Ann. §§ 23-2-2.7-1 to -7), Iowa (Iowa Code Ann. §§ 523H.1 to .17, and Iowa Code Ann. §§ 537A.10),

Michigan (Mich. Comp. Laws Ann. §§ 445.1501 et seq.), Minnesota (Minn. Stat. Ann. §§ 80C.01 et seq.), Mississippi (Miss. Code. Ann. §§ 75-24-51 to -61), Missouri (Mo. Ann. Stat. §§ 407.400 to .420), Nebraska (Neb. Rev. Stat. §§ 87.401 to 410), New Jersey (N.J. Stat. Ann. §§ 56:10-1 to -12), Virginia (Va. Code §§ 13.1-557 to -574), Washington (Wash. Rev. Code §§19.100.010 et seq.), and Wisconsin (Wisc. Stat. Ann. §§ 135.01 to .07) have franchises under the applicable franchise statutes because: (a) ADQ granted each of these Member Franchisees in each of those states the right to engage in the business of offering and distributing goods and services using ADQ's trademarks; (b) each of the Member Franchisees in these states and ADQ have a community of interest in the marketing of goods and services at retail; and (c) each of the Member Franchisees in these states pays ADQ a franchise fee.

122. Pursuant to the franchise statutes in Arkansas (Ark. Code Ann. § 4-72-204), California (Cal. Bus. & Prof. Code § 20020), Connecticut (Conn. Gen. Stat. Ann. § 42-133f), Delaware (Del. Code. Ann. tit. 6, § 2552), Hawaii (Haw. Rev. Stat. § 482E-6), Illinois (815 Ill. Comp. Stat. §§ 705/19), Indiana (Ind. Code Ann. § 23-2-2.7-1), Iowa (Iowa Code Ann. § 523H.7), Michigan (Mich. Comp. Laws Ann. §§ 445.1527), Minnesota (Minn. Stat. Ann. § 80C.14), Nebraska (Neb. Rev. Stat. §§ 87.404), New Jersey (N.J. Stat. Ann. §§ 56:10-5), Virginia (Va. Code §§ 13.1-564), Washington (Wash. Rev. Code §§19.100.180), and Wisconsin (Wisc. Stat. Ann. §§ 135.03) a franchisor such as ADQ cannot terminate or cancel a franchise except for "good cause."

123. Pursuant to the franchise statutes in Mississippi (Miss. Code. Ann. §§ 75-24-53) and Missouri (Mo. Ann. Stat. §§ 407.405), a franchisor cannot terminate a franchise agreement without providing proper notice.

124. ADQ has caused or will cause de facto terminations without notice and, where applicable, without cause in violation of the aforementioned statutes by announcing that Member Franchisees located those states:

- Cannot renew their franchise agreements without first converting their franchises into a completely different concept – DQ Grill & Chill® franchises;
- Cannot relocate their franchises without first converting their franchises into DQ Grill & Chill® franchises;
- Cannot transfer their franchise agreements without first converting their franchises into DQ Grill & Chill® franchises;
- Cannot upgrade their franchises without first converting their franchises into DQ Grill & Chill® franchises.

125. ADQ has caused or will cause de facto terminations without notice and, where applicable, without cause in violation of the aforementioned statutes by imposing arbitrary requirements upon prospective purchasers of Member Franchisees' franchises located in the aforementioned states, which include, but are not limited to:

- A net worth (exclusive of residence and personal items) totaling the greater of 50% of the total purchase price of the transaction or \$75,000;
- Liquid assets totaling the greater of 20% of the total purchase price of the transaction or \$30,000;
- Operating capital (separate from liquid assets) totaling the greater of \$25,000 or 33% of fixed and semi-variable expenses, including debt service, and manager salary not to exceed \$100,000;
- Passage of a Basic Skills Test;

- Submission to a background check.

126. ADQ has caused or will cause de facto terminations without notice and, where applicable, without cause in violation of the aforementioned statutes by threatening to force Member Franchisees (or Member Franchisees' successors) located in those states that had been selling non-system food to discontinue the sale of non-system food.

127. ADQ has caused or will cause de facto terminations without notice and, where applicable, without cause in violation of the aforementioned statutes by threatening to force Member Franchisees (or Member Franchisees' successors) located in those states that currently sells hotdogs to begin selling only a certain brand of all-beef hotdogs.

128. ADQ has caused or will cause de facto terminations without notice and, where applicable, without cause in violation of the aforementioned statutes by threatening to force Member Franchisees (or Member Franchisees' successors) located in those states to begin selling Cakes, and to make the investment necessary to sell Cakes, including, without limitation, substantial modification of the store facility and the hiring of additional skilled employees.

129. ADQ has caused or will cause de facto terminations without notice and, where applicable, without cause in violation of the aforementioned statutes by threatening to force Member Franchisees (or Member Franchisees' successors) located in those states to redesign their restaurants to accommodate the Hot Shot Food Preparation system.

130. ADQ has caused or will cause de facto terminations without notice and, where applicable, without cause in violation of the aforementioned statutes by threatening to force Member Franchisees (or Member Franchisees' successors) located in those states to acquire the equipment and incur the cost of implementing a credit-card and gift-card payment program.

131. The aforementioned statutes authorize franchisees located in those states that have been damaged by a violation of those statutes to seek equitable relief, and/or to recover actual damages, including in some cases attorneys' fees.

132. ADQ's violations as referenced above have caused or will cause irreparable harm by (1) conditioning the ability of Member Franchisees located in those states to renew, relocate, transfer, and/or upgrade their franchises upon the conversions of their franchises into DQ Grill & Chill® franchises, (2) placing unreasonable requirements upon prospective purchasers of Member Franchisees' franchises located in those states; (3) requiring Member Franchisees located in those states who sell hotdogs to sell only a certain brand of all-beef hotdogs; (4) placing in doubt the ability of Member Franchisees located in those states to sell non-system food; (5) forcing Member Franchisees located in those states to begin selling Cakes; (6) forcing Member Franchisees located in those states to redesign their restaurants to accommodate the Hot Shot Food Preparation system; and (7) threatening to force Member Franchisees located in those states to acquire the equipment and incur the cost of implementing a credit-card and gift-card payment program.

133. The DQOA therefore requests that this Court issue a preliminary and permanent injunction enjoining ADQ from taking or continuing to take the aforementioned actions.

COUNT IV
Violation of individual franchise statutes/renewal

The DQOA incorporates and realleges the foregoing as fully set forth herein.

134. Member Franchisees in Arkansas (Ark. Code Ann. §§ 4-72-201 to 210), California (Cal. Bus. & Prof. Code §§ 20000-20043), Connecticut (Conn. Gen. Stat. Ann. §§ 42-133e to 133h), Delaware (Del. Code. Ann. tit. 6, §§ 2551-2556), Hawaii (Haw. Rev. Stat. §§ 482E-1 to 12), Illinois (815 Ill. Comp. Stat. §§ 705/1 et seq.), Indiana (Ind. Code Ann. §§ 23-2-

2.7-1 to -7), Iowa (Iowa Code Ann. §§ 523H.1 to .17, and Iowa Code Ann. §§ 537A.10), Michigan (Mich. Comp. Laws Ann. §§ 445.1501 et seq.), Minnesota (Minn. Stat. Ann. §§ 80C.01 et seq.), Mississippi (Miss. Code. Ann. §§ 75-24-51 to -61), Missouri (Mo. Ann. Stat. §§ 407.400 to .420), Nebraska (Neb. Rev. Stat. §§ 87.401 to 410), New Jersey (N.J. Stat. Ann. §§ 56:10-1 to -12), Virginia (Va. Code §§ 13.1-557 to -574), Washington (Wash. Rev. Code §§19.100.010 et seq.), and Wisconsin (Wisc. Stat. Ann. §§ 135.01 to .07) have franchises under the applicable franchise statutes because: (a) ADQ granted each of these Member Franchisees in each of those states the right to engage in the business of offering and distributing goods and services using ADQ's trademarks; (b) each of the Member Franchisees in these states and ADQ have a community of interest in the marketing of goods and services at retail; and (c) each of the Member Franchisees in these states pays ADQ a franchise fee.

135. Pursuant to the franchise statutes in Arkansas (Ark. Code Ann. § 4-72-204), Connecticut (Conn. Gen. Stat. Ann. § 42-133f), Delaware (Del. Code. Ann. tit. 6, § 2552), Hawaii (Haw. Rev. Stat. § 482E-6), Indiana (Ind. Code Ann. § 23-2-2.7-1), Iowa (Iowa Code Ann. § 523H.8), Nebraska (Neb. Rev. Stat. §§ 87.404), New Jersey (N.J. Stat. Ann. §§ 56:10-5), Virginia (Va. Code §§ 13.1-564), and Wisconsin (Wisc. Stat. Ann. §§ 135.03) a franchisor such as ADQ cannot fail to renew a franchise except for “good cause.”

136. Pursuant to the franchise statutes in California (Cal. Bus. & Prof. Code §§ 20025), Illinois (815 Ill. Comp. Stat. §§ 705/20), Minnesota (Minn. Stat. Ann. §§ 80C.14), Mississippi (Miss. Code. Ann. §§ 75-24-54), Missouri (Mo. Ann. Stat. §§ 407.405), and Washington (Wash. Rev. Code §§19.100.180), a franchisor cannot fail to renew a franchise without providing notice and other considerations.

137. Pursuant to the franchise statute in Michigan (Mich. Comp. Laws Ann. § 445.1527) a contractual provision authorizing the franchisor to fail to renew a franchise agreement for on terms generally available to other franchisees of the same class or type under similar circumstances is void.

138. ADQ violated the aforementioned franchise statutes by announcing that Member Franchisees located those states cannot renew their franchise agreements without first converting their franchises into DQ Grill & Chill® franchises.

139. The aforementioned statutes authorize franchisees located in those states that have been damaged by a violation of those statutes to seek equitable relief, and/or to recover actual damages, including in some cases attorneys' fees.

140. ADQ's violations as referenced above have caused or will cause irreparable harm by conditioning the ability of Member Franchisee located in those states to renew their franchises upon the conversion of their franchises into a completely different concept -- a DQ Grill & Chill® franchise.

141. The DQOA, therefore, requests that this Court issue a preliminary and permanent injunction enjoining ADQ from taking or continuing to take the aforementioned actions.

COUNT V

Violation of individual franchise statutes/other relationship issues

The DQOA incorporates and realleges the foregoing as fully set forth herein.

142. Member Franchisees in Arkansas (Ark. Code Ann. §§ 4-72-201 to 210), California (Cal. Bus. & Prof. Code §§ 20000-20043), Connecticut (Conn. Gen. Stat. Ann. §§ 42-133e to 133h), Delaware (Del. Code. Ann. tit. 6, §§ 2551-2556), Hawaii (Haw. Rev. Stat. §§ 482E-1 to 12), Illinois (815 Ill. Comp. Stat. §§ 705/1 et seq.), Indiana (Ind. Code Ann. §§ 23-2-2.7-1 to -7), Iowa (Iowa Code Ann. §§ 523H.1 to .17, and Iowa Code Ann. §§ 537A.10),

Michigan (Mich. Comp. Laws Ann. §§ 445.1501 et seq.), Minnesota (Minn. Stat. Ann. §§ 80C.01 et seq.), Mississippi (Miss. Code. Ann. §§ 75-24-51 to -61), Missouri (Mo. Ann. Stat. §§ 407.400 to .420), Nebraska (Neb. Rev. Stat. §§ 87.401 to 410), New Jersey (N.J. Stat. Ann. §§ 56:10-1 to -12), Virginia (Va. Code §§ 13.1-557 to -574), Washington (Wash. Rev. Code §§19.100.010 et seq.), and Wisconsin (Wisc. Stat. Ann. §§ 135.01 to .07) have franchises under the applicable franchise statutes because: (a) ADQ granted each of these Member Franchisees in each of those states the right to engage in the business of offering and distributing goods and services using ADQ's trademarks; (b) each of the Member Franchisees in these states and ADQ have a community of interest in the marketing of goods and services at retail; and (c) each of the Member Franchisees in these states pays ADQ a franchise fee.

143. Pursuant to Ark. Code Ann. § 4-72-206, it shall be a violation, inter alia, for any franchisor:

- To require a franchisee at the time of entering into a franchise agreement to assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this chapter;
- To prohibit directly or indirectly the right of free association among franchisees for any lawful purpose;
- To prevent the transfer, sale or issuance of shares of stock or debentures to employees, personnel of the franchisee, or heirs of the principal owner as long as basic financial requirements of the franchisor are complied with;
- To refuse to deal with a franchisee in a commercially reasonable manner and in good faith.

144. Pursuant to Haw. Rev. Stat. § 482E-6, the parties shall deal with each other in good faith. In addition, pursuant to this same statute it shall be a violation, inter alia, for any franchisor:

- To restrict the right of franchisees to join an association of franchisees;

- To require a franchisee to purchase or lease goods or services of the franchisor or from the designated sources of supply unless such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds;
- To discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, except for some very specific circumstances;
- To obtain money, goods, services, anything of value, or any other benefit from any other person with whom the franchisee does business on account of such business unless the franchisor advised the franchisee in advance of the franchisor's intention to receive such business;
- To impose on a franchisee "by contract, rule or regulation, whether or written or oral, any unreasonable and arbitrary standard of conduct.

145. Pursuant to 815 Ill. Comp. Stat. § 705/17, it shall be an unfair franchise practice and a violation of the statute for a franchisor to in any way restrict any franchisee from joining or participating in any trade association. Pursuant to 815 Ill. Comp. Stat. § 705/18, a franchisor shall not "unreasonably and materially discriminate between franchisees operating a franchise business located in this State in the charges offered or made for franchise fees, royalties, goods, services, equipment, rentals or advertising services, except for some very specific enumerated situations."

146. Pursuant to Ind. Code. Ann. § 23-2-2.7-2, it shall be a violation, inter alia, for any franchisor:

- To include within the franchise agreement the right to substantially modify the franchise agreement without the consent in writing of the franchisee;
- To coerce a franchisee to order or accept delivery of any goods, supplies, inventories or services that are neither necessary to the operation of the franchise nor voluntarily ordered by the franchisee;
- To coerce a franchisee to order or accept delivery of any goods offered for sale by the franchisee that include modifications or accessories which are not included in the base price of those goods as publicly advertised by the franchisor;

- To coerce a franchisee to participate in an advertising campaign or contest, any promotional campaign, promotional materials, display decorations, or materials at an expense to the franchisee over and above the maximum percentage of gross monthly sales or the maximum absolute sum required to be spent by the franchisee provided for in the franchise agreement;
- To coerce a franchisee to enter into any agreement with the franchisor or any designee of the franchisor, or do any other act prejudicial to the franchisee, by threatening to cancel or fail to renew any agreement between the franchisee and the franchisor;
- To deny the surviving spouse, heirs or estate of a deceased franchisee the opportunity to participate in the ownership of the franchise;
- To discriminate unfairly among franchisees or unreasonably fail or refuse to comply with the terms of the franchise agreement; to obtain money, goods, services or any other benefit from any other person with whom the franchisee does business, on account of, or in relation to, the transaction between the franchisee and the other person;
- To increase prices of goods provided by the franchisor which the franchisee has ordered for retail consumers prior to the franchisee's receipt of a written official price increase notification; and from using deceptive advertising or engaging in deceptive acts in connection with the franchise or the franchisor's business.

147. Pursuant to Iowa Code Ann. § 523H.9, a franchisor shall not restrict a franchisee from associating with other franchisees or from participating in a trade association, and shall not retaliate against a franchisee for engaging in these activities. Pursuant to Iowa Code Ann. § 523H.10, a franchisor must act in good faith and performance in enforcement of the franchise agreement. Good faith means honesty in fact in the observance of reasonable commercial standards of fair dealing in the trade. Pursuant to Iowa Code § 523H.12, the franchisor shall allow a franchisee to obtain equipment, fixtures, supplies, and services used in the establishment and operation of the franchised business from sources of the franchisee's choosing.

148. Pursuant to Mich. Comp. Laws § 445.1527, it shall be a violation, inter alia, for any franchisor:

- To prohibit the right of a franchisee to join an association of franchisees;

- To refuse to permit a transfer of ownership of a franchise except for good cause. Good cause shall include but is not limited to the failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards; the fact that the proposed transferee is a competitor of the franchisor or subfranchisor; the unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations; and/or the failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.

149. Pursuant to Minn. Stat. § 80C.14, subd. 5, it is unfair and inequitable for a franchisor to unreasonably withhold consent to an assignment, transfer, or sale of the franchise whenever the franchisee to be substituted meets the present qualifications and standards required of the franchisees of the particular franchisor. Pursuant to Minn. Rule 2860.4400, it shall be a violation, inter alia, for any franchisor:

- To restrict or inhibit, directly or indirectly, the free association among franchisees for any lawful purpose;
- To discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any business dealing, unless any classification of or discrimination between franchisees is based on franchises granted at different times, geographic, market, volume, or size differences, costs incurred by the franchisor, or other reasonable grounds; impose on a franchisee by contract or rule, whether written or oral, any standard of conduct that is unreasonable;
- To unreasonably withhold consent to any assignment, transfer or sale of a franchise whenever the franchisee to be substituted meets the present qualifications and standards required of the franchisees of the particular franchisor.

150. Pursuant to Neb. Rev. Stat. § 87.406, it shall be a violation, inter alia, for any franchisor:

- To prohibit directly or indirectly the right of free association among franchisees for any lawful purpose;
- To restrict the sale of any equity or debenture issue or the transfer of any securities of any franchisee or in any way prevent or attempt to prevent the transfer, sale, or issuance of shares of stock or debentures to employees, personnel

of the franchisee, or heirs of the principal owner, as long as basic financial requirements of the franchisor are complied with; and to impose unreasonable standards of performance upon a franchisee.

151. Pursuant to N.J. Stat. § 56:10-6, a franchisor can prohibit a franchisee's transfer of its franchise for reasons "relating to the character, financial ability or business experience of the proposed transferee." Pursuant to N.J. Stat. § 56:10-7, it shall be a violation, inter alia, for any franchisor:

- To prohibit directly or indirectly the right of free association among franchisees for any lawful purpose;
- To restrict the sale of any equity or debenture issue or the transfer of any securities of a franchise or in any way prevent or attempt to prevent the transfer, sale or issuance of equity securities or debentures to employees, personnel of the franchisee, or spouse, child, or heir of an owner, as long as basic fundamental requirements of the franchisor are complied with; and to impose unreasonable standards of performance upon a franchisee.

152. Pursuant to Wash. Rev. Code § 19.100.180, it shall be a violation, inter alia, for any franchisor:

- To restrict or inhibit the right of the franchisees to join an association of franchisees;
- To require a franchisee to purchase or lease goods or services of the franchisor or from approved sources of supply unless and to the extent that the franchisor satisfies the burden of proving that such restricted purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds and do not substantially affect competition; to discriminate between franchisees and the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or any other business dealing unless certain preconditions are met;
- To sell, rent or offer to sell to a franchisee any product or service for more than a fair and reasonable price; to obtain money, goods, services, anything of value, or any other benefit from any other person with whom the franchisee does business on account of such business unless such benefit is disclosed to the franchisee;
- To impose on a franchisee by contract, rule or regulation, whether written or oral, any standard of conduct unless the person so doing can sustain the burden of proving such to be reasonable and necessary.

153. Pursuant to Wisc. Stat. § 135.03, no franchisor may terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause.

154. ADQ violated the aforementioned statutes by announcing that each Member Franchisee located in the applicable states:

- Cannot renew its Franchise Agreement without first converting the franchise into a completely different concept – a DQ Grill & Chill® franchise;
- Cannot relocate the franchise without first converting the franchise into a DQ Grill & Chill® franchise;
- Cannot transfer the Franchise Agreement without first converting the franchise into a DQ Grill & Chill® franchise;
- Cannot upgrade the franchise without first converting the franchise into a DQ Grill & Chill® franchise.

155. ADQ also violated the aforementioned statutes by imposing arbitrary requirements upon prospective purchasers of franchises for Member Franchisees located in the applicable states, which include, but are not limited to:

- A net worth (exclusive of residence and personal items) totaling the greater of 50% of the total purchase price of the transaction or \$75,000;
- Liquid assets totaling the greater of 20% of the total purchase price of the transaction or \$30,000;
- Operating capital (separate from liquid assets) totaling the greater of \$25,000 or 33% of fixed and semi-variable expenses, including debt service, and manager salary not to exceed \$100,000;

- Passage of a Basic Skills Test;
- Submission to a background check.

156. By its conduct, including but not limited to the following, ADQ also violated the applicable franchise statutes by threatening to force those Member Franchisees (or Member Franchisees' successors) located in the applicable states and that have been selling non-system food to discontinue the sale of non-system food.

157. By its conduct, including but not limited to the following, ADQ also violated the applicable franchise statutes by threatening to force those Member Franchisees (or Member Franchisees' successors) located in the applicable states and that currently sell hotdogs to begin selling only a certain brand of all-beef hotdogs.

158. By its conduct, including but not limited to the following, ADQ also violated the applicable franchise statutes by threatening to force those Member Franchisees (or Member Franchisees' successors) located in applicable states to begin selling Cakes, and to make the investment necessary to sell Cakes, including, without limitation, substantial modification of the store facility and the hiring of additional skilled employees.

159. By its conduct, including but not limited to the following, ADQ also violated the applicable franchise statutes by threatening to force those Member Franchisees (or Member Franchisees' successors) located in the applicable states to redesign their restaurants to accommodate the Hot Shot Food Preparation system.

160. By its conduct, including but not limited to the following, ADQ also violated the applicable franchise statutes by threatening to force those Member Franchisees (or Member Franchisees' successors) located in the applicable states to acquire the equipment and incur the cost of implementing a credit-card and gift-card payment program.

161. ADQ's violations as referenced above have caused or will cause irreparable harm by (1) conditioning the ability of Member Franchisees located in the applicable states to renew, relocate, transfer, and/or upgrade their franchises upon the conversion of their franchises into DQ Grill & Chill® franchises, (2) placing unreasonable requirements upon prospective purchasers of the franchises of those Member Franchisees located in the applicable states; (3) requiring Member Franchisees located in the applicable states that sell hotdogs to sell only a certain brand of all-beef hotdogs; (4) placing in doubt the ability of Member Franchisees located in the applicable states to sell non-system food; (5) forcing those Member Franchisee located in the applicable states to begin selling Cakes; (6) forcing those Member Franchisees located in the applicable states to redesign their restaurants to accommodate the Hot Shot Food Preparation system; and (7) threatening to force Member Franchisees located in the applicable states to acquire the equipment and incur the cost of implementing a credit-card and gift-card payment program

162. The DQOA, therefore, requests that this Court issue a preliminary and permanent injunction enjoining ADQ from taking or continuing to take the aforementioned actions.

COUNT VI
Declaratory judgment

The DQOA incorporates and realleges the foregoing as fully set forth herein.

163. The franchise agreements prohibit ADQ from forcing Member Franchisees to convert their franchises into DQ Grill & Chill® franchises.

164. The Minnesota Franchise Act prohibits ADQ from forcing Member Franchisees to convert their franchises into DQ Grill & Chill® franchises.

165. The other applicable franchise statutes prohibit ADQ from forcing Member Franchisees located in those states to convert their franchises into DQ Grill & Chill® franchises.

166. The franchise agreements prohibit ADQ from placing unreasonable requirements upon the prospective purchasers of Member Franchisees' franchises.

167. The Minnesota Franchise Act prohibits ADQ from placing unreasonable requirements upon the prospective purchasers of Member Franchisees' franchises.

168. The other applicable franchise statutes prohibit ADQ from placing unreasonable requirements upon the prospective purchasers of the franchises of the Member Franchisees whose franchises are located in those states.

169. The franchise agreements prohibit ADQ from threatening to prevent Member Franchisees from selling non-system food items.

170. The Minnesota Franchise Act prohibits ADQ from threatening to prevent Member Franchisees from selling non-system food items.

171. The other applicable franchise statutes prohibit ADQ from threatening to force Member Franchisees who are located in those states from selling non-system food items.

172. The franchise agreements prohibit ADQ from forcing Member Franchisees who sell non-system food to sell certain brands or types of non-system food.

173. The Minnesota Franchise Act prohibits ADQ from threatening to force Member Franchisees who sell non-system food to sell certain brands or types of non-system food.

174. The other applicable franchise statutes prohibit ADQ from threatening to force Member Franchisees located in those states who sell non-system food to sell certain brands or types of non-system food.

175. The franchise agreements prohibit ADQ from forcing Member Franchisees to sell any particular food item, including Cakes.

176. The Minnesota Franchise Act prohibits ADQ from forcing Member Franchisees to sell any particular food item, including Cakes.

177. The other applicable franchise statutes prohibit ADQ from forcing Member Franchisees located in those states to sell any particular food item, including Cakes.

178. The franchise agreements prohibit ADQ from forcing any Member Franchisee (or each Member Franchisee's successor) to redesign his or her restaurant to accommodate the Hot Shot Food Preparation system.

179. The Minnesota Franchise Act prohibits ADQ from forcing any Member Franchisee (or each Member Franchisee's successor) to redesign his or her restaurant to accommodate the Hot Shot Food Preparation system.

180. The other applicable franchise statutes prohibit ADQ from forcing Member Franchisees (or Member Franchisees' successors) located in those states to redesign their restaurants to accommodate the Hot Shot Food Preparation system.

181. The franchise agreements prohibit ADQ from forcing Member Franchisees (or Member Franchisees' successors) to acquire the equipment and incur the cost of implementing a credit-card and gift-card payment program.

182. The Minnesota Franchise Act prohibits ADQ from forcing Member Franchisees (or Member Franchisees' successors) to acquire the equipment and incur the cost of implementing a credit-card and gift-card payment program.

183. The other applicable franchise statutes prohibit ADQ from forcing Member Franchisees (or Member Franchisees' successors) located in the applicable states to acquire the equipment and incurring the costs of implementing a credit-card and gift-care payment program.

184. There exists an actual controversy between ADQ and Member Franchisees regarding the ability of ADQ to force Member Franchisees to convert their franchises into DQ Grill & Chill® franchises upon renewal, relocation, transfer, and/or the upgrade of the franchises.

185. There exists an actual controversy between ADQ and Member Franchisees regarding the ability of ADQ to place unreasonable requirements upon the prospective purchasers of Member Franchisees' franchises.

186. There exists an actual controversy between ADQ and Member Franchisees regarding the ability of Member Franchisees to sell non-system food items.

187. There exists an actual controversy between ADQ and Member Franchisees regarding the ability of ADQ to force Member Franchisees who sell non-system food to sell certain brands or types of non-system food.

188. There exists an actual controversy between ADQ and Member Franchisees regarding whether ADQ can force Member Franchisees to sell any particular food item, including Cakes.

189. There exists an actual controversy between ADQ and Member Franchisees regarding whether ADQ can force Member Franchisees to redesign and/or remodel their restaurants to incorporate the Hot Shot Food Preparation system.

190. There exists an actual controversy between ADQ and Member Franchisees regarding whether ADQ can force Member Franchisees to acquire the equipment and incur the cost of implementing a credit-card and gift-card payment program.

191. Pursuant to 735 Ill. Comp. Stat. § 5/2-701, DQOA seeks a declaration from this Court that under the terms of the franchise agreements ADQ cannot condition:

- The renewal of Member Franchisees' franchise agreements on the conversion of the franchises into DQ Grill & Chill® franchises;
- The relocation of Member Franchisees' franchises upon the conversion of the franchises into DQ Grill & Chill® franchises;
- The transfer of Member Franchisees' franchise agreements upon the conversion the franchises into DQ Grill & Chill® franchises; and/or
- The upgrade or improvement of Member Franchisees' restaurant facilities upon the conversion of the franchises into DQ Grill & Chill® franchises.

192. Pursuant to 735 Ill. Comp. Stat. § 5/2-701, DQOA seeks a declaration from this Court that under the Minnesota Franchise Act ADQ cannot condition:

- The renewal of Member Franchisees' franchise agreements on the conversion of their franchises into DQ Grill & Chill® franchises;
- The relocation of Member Franchisees' franchises upon the conversion of the franchises into DQ Grill & Chill® franchises;
- The transfer of Member Franchisees' franchise agreements upon the conversion the franchises into DQ Grill & Chill® franchises; and/or
- The upgrade or improvement of Member Franchisees' restaurant facilities upon the conversion of the franchises into DQ Grill & Chill® franchises.

193. Pursuant to 735 Ill. Comp. Stat. § 5/2-701, DQOA seeks a declaration from this Court that under the applicable franchise agreements regulating Member Franchisees that ADQ cannot condition:

- The renewal of franchise agreements of Member Franchisees on the conversion of their franchises into DQ Grill & Chill® franchises;
- The relocation of franchises of Member Franchisees upon the conversion of the franchises into DQ Grill & Chill® franchises;
- The transfer of franchise agreements of Member Franchisees upon the conversion the franchises into DQ Grill & Chill® franchises; and/or
- The upgrade or improvement of restaurant facilities of Member Franchisees upon the conversion of the franchises into DQ Grill & Chill® franchises.

194. Pursuant to 735 Ill. Comp. Stat. § 5/2-701, DQOA seeks a declaration from this Court that, under the franchise agreements, ADQ cannot place unreasonable requirements upon the transfer of the franchises of Member Franchisees to prospective purchasers, including but not limited to:

- A net worth (exclusive of residence and personal items) totaling the greater of 50% of the total purchase price of the transaction or \$75,000;
- Liquid assets totaling the greater of 20% of the total purchase price of the transaction or \$30,000;
- Operating capital (separate from liquid assets) totaling the greater of \$25,000 or 33% of fixed and semi-variable expenses, including debt service, and manager salary not to exceed \$100,000;
- Passage of a Basic Skills Test; and/or

- Submission to a background check.

195. Pursuant to 735 Ill. Comp. Stat. § 5/2-701, DQOA seeks a declaration from this Court that, under the Minnesota Franchise Act, ADQ cannot place unreasonable requirements upon the transfer of the franchises to prospective purchasers, including but not limited to:

- A net worth (exclusive of residence and personal items) totaling the greater of 50% of the total purchase price of the transaction or \$75,000;
- Liquid assets totaling the greater of 20% of the total purchase price of the transaction or \$30,000;
- Operating capital (separate from liquid assets) totaling the greater of \$25,000 or 33% of fixed and semi-variable expenses, including debt service, and manager salary not to exceed \$100,000;
- Passage of a Basic Skills Test; and/or
- Submission to a background check.

196. Pursuant to 735 Ill. Comp. Stat. § 5/2-701, DQOA seeks a declaration from this Court that, under the applicable franchise statutes, ADQ cannot place unreasonable requirements upon the transfer of the franchises located in those states to prospective purchasers, including but not limited to:

- A net worth (exclusive of residence and personal items) totaling the greater of 50% of the total purchase price of the transaction or \$75,000;
- Liquid assets totaling the greater of 20% of the total purchase price of the transaction or \$30,000;

- Operating capital (separate from liquid assets) totaling the greater of \$25,000 or 33% of fixed and semi-variable expenses, including debt service, and manager salary not to exceed \$100,000;
- Passage of a Basic Skills Test; and/or
- Submission to a background check.

197. Pursuant to 735 Ill. Comp. Stat. § 5/2-701, DQOA seeks a declaration from this Court that ADQ's requirement that Member Franchisees must convert their franchises into DQ Grill & Chill® franchises is a material breach of the franchise agreements, and that Member Franchisees have the option of no longer performing under their franchise agreements.

198. Pursuant to 735 Ill. Comp. Stat. § 5/2-701, DQOA seeks a declaration from this Court that ADQ's requirement that Member Franchisees must convert their franchises into DQ Grill & Chill® franchises is a de facto termination of the Member Franchisees' franchise agreements without good cause in violation of the Minnesota Franchise Act.

199. Pursuant to 735 Ill. Comp. Stat. § 5/2-701, DQOA seeks a declaration from this Court that ADQ's requirement that Member Franchisees located in the applicable states must convert their franchises into DQ Grill & Chill® franchises is a de facto termination of the Member Franchisees' franchise agreements without good cause in violation of the applicable franchise statutes.

200. Pursuant to 735 Ill. Comp. Stat. § 5/2-701, DQOA seeks a declaration from this Court that ADQ does not have the authority to force the Member Franchisees to stop selling non-system food.

201. Pursuant to 735 Ill. Comp. Stat. § 5/2-701, DQOA seeks a declaration from this Court that ADQ does not have the authority to force Member Franchisees to sell particular types or kinds of non-system food.

202. Pursuant to 735 Ill. Comp. Stat. § 5/2-701, the DQOA seeks a declaration from this Court that ADQ does not have the authority to require Member Franchisees to sell any particular item on the Dairy Queen menu, including Cakes.

203. Pursuant to 735 Ill. Comp. Stat. § 5/2-701, the DQOA seeks a declaration from this Court that ADQ does not have the authority to require Member Franchisees to redesign their restaurants to accommodate the Hot Shot Food Preparation system.

204. Pursuant to 735 Ill. Comp. Stat. § 5/2-701, the DQOA seeks a declaration from this Court that ADQ does not have the authority to require Member Franchisees to acquire the equipment and incur the cost of implementing a credit-card and gift-card payment program.

WHEREFORE, the DQOA requests that this Court issue:

1. A declaration that ADQ cannot force Member Franchisees to convert their franchises into DQ Grill & Chill® franchises;

2. A declaration that ADQ cannot place requirements upon the prospective purchasers of Member Franchisees' franchises that include arbitrary financial standards such as a net worth (exclusive of residence and personal items) totaling the greater of 50% of the total purchase price of the transaction or \$75,000, liquid assets totaling the greater of 20% of the total purchase price of the transaction or \$30,000, operating capital (separate from liquid assets) totaling the greater of \$25,000 or 33% of fixed and semi-variable expenses, including debt service, and manager salary not to exceed \$100,000, passage of a Basic Skills Test, and/or submission to a background check.

3. A declaration that any financial requirement placed upon prospective franchisees must be based upon the actual financial requirements necessary to operate the subject restaurant.
4. A declaration that any skills requirement placed upon prospective franchisees must be based upon the actual skills necessary to operate the subject restaurant.
5. A declaration that ADQ can reject a prospective franchisee for past actions only if those past actions are reasonably related to the operation of the subject restaurant.
6. A declaration that ADQ does not have the authority to force Member Franchisees to stop selling non-system food;
7. A declaration that ADQ does not have the authority to require Member Franchisees who sell non-system food to sell certain types or kinds of non-system food;
8. A declaration that ADQ does not have the authority to require Member Franchisees to carry every item on the approved Dairy Queen menu, including Cakes;
9. A declaration that ADQ does not have the authority to require Member Franchisees to redesign their restaurants to accommodate the Hot Shot Food Preparation system;
10. A declaration that ADQ does not have the authority to require Member Franchisees to acquire the equipment and incur the cost of implementing a credit-card and gift-card payment program;
11. A judgment awarding the DQOA its costs and attorneys' fees to the extent available under applicable law; and
12. Any other relief the Court deems appropriate.

Dated: July 13, 2006

DADY & GARNER, P.A.