



MEDIATION NEWS ALERT

The DQOA and IDQ agreed to meet on September 25, 2007 with a skilled mediator (Michael Lewis) to discuss unification of purchasing and distribution in the Dairy Queen system, and establishment of an independent, fully funded, viable association representing all of the Dairy Queen franchisees. The discussions on that day did not narrow the gaps between the two sides. However, at the end of the day, the DQOA promised to present a proposal to IDQ.

The DQOA presented its proposal to IDQ on October 24. On the following day, October 25, IDQ notified the DQOA that it did not believe that there was any reason for the parties to meet to discuss the DQOA proposal, but that IDQ would submit a proposal of its own to the DQOA within three weeks.

The entire DQOA proposal is attached to this News Alert for your review, because the DQOA has nothing to hide from the franchisee community. A summary of the key points of the DQOA proposal follows:

1. Margins

The DQOA proposed that USCI would operate on the following principles:

- a) 4% margin on dock price (very generous, considering that the DQOC operates on a 2% margin).
- b) All finished goods, as well as ingredients for packaging and food, including Orange Julius compounds, would be at 4% margin.
- c) Hamburgers and Mix to stay at 1%.
- d) LTO's, novelties and cakes at 5%.
- e) Colgate Palmolive at 0% (as promised by IDQ at the start of the program).
- f) Other cleaning/maintenance supplies at 4%.
- g) Eliminate the ½% warehouse fee and the ½% redistribution warehouse fee.
- h) All costs of running the USCI to come out of the above generous margins. In other words, the franchisees would no longer write a blank check for USCI expenses.

2. Elimination of hidden revenue streams to the USCI and IDQ/ADQ

- a) "No other fees, allowances, rebates, etc. shall be paid to IDQ/ADQ without certification, and paid funds shall be used to reduce the dock price." "Certification" would be a legal requirement imposed on vendors, manufacturers and distributors, and penalties would be levied on vendors, manufacturers and distributors that failed to disclose the payments that they made to IDQ/ADQ and USCI.

3. Oversight

- a) Duly elected franchisee representatives on a franchisee oversight committee "shall have the right to challenge all decisions of the USCI that affect franchisee profitability, using

the challenge process suggested in the December 8, 2005 letter from H. Cooper to C. Mooty and agreed to by C. Mooty in his December 9, 2005 letter to H. Cooper.”

- b) “...an arbitrator, agreed upon by both parties hereto, will become the sole arbitrator of all challenge issues that occur herein.” All challenges will be presented, responded to and decided within 15 consecutive days.

4. Establishment of a financially sound, 100% independent franchisee association.

- a) 1% of sales through the newly unified USCI would be paid to the DQOA.
b) Mission of the DQOA is to protect and preserve the welfare of the Dairy Queen franchisees while providing support, where appropriate, to the Dairy Queen system.
c) The DQOA will maintain a “special occurrence” account. Once sufficient funds are invested in this account, DQOA will authorize USCI to temporarily reduce the 1% DQOA margin on USCI sales. (Yes, this special occurrence account could be used for legal challenges to IDQ in the event that franchisee rights are violated.)

On November 14, 2007 Mr. Mooty sent a letter to Mr. Cooper presenting the IDQ proposal. Unfortunately, Mr. Mooty marked it “confidential,” so we are unable to share the details with you.

The DQOA has been pressuring Mr. Mooty for many years to come clean with the franchisees on all of IDQ’s revenue streams that are costing the franchisees money. The DQOA has challenged Mr. Mooty to give the SCAC the authority that it needs to evaluate, audit and modify those revenue streams. Franchisees need to ask themselves, “How is the DQOA/DQOC able to beat IDQ pricing when the DQOC has (according to Mr. Mooty) only 15% of the business?” The answer is clearly evident in Mr. Mooty’s rationale for his continued refusal to consider unifying the supply chain on reasonable terms. **IT’S THE MONEY.**

IDQ is making excessive profits, much more than a reasonably profitable co-op would generate, and Mr. Mooty is unwilling to give that up. The suggestion by Mr. Mooty that he is interested in unification and reducing franchisee costs is a façade. The assurance that Mr. Mooty is giving to the system that the franchisee representatives on the SCAC, FAC and DACs have the ability and the authority to get to the bottom of IDQ’s excessive profits is also a façade.

The DQOA/DQOC is left with no choice. The DQOC will continue to compete with the USCI (this is the only way that the franchisees will even remotely keep USCI honest), and the DQOA will continue to challenge IDQ in arbitration and litigation whenever necessary to protect franchisee rights.

ASK YOURSELVES AGAIN...HOW IS THE DQOC ABLE TO BE COMPETITIVE WITH THE USCI WHEN WE ONLY HAVE 15% OF THE BUSINESS? COME CLEAN, MR. MOOTY. WHAT ARE YOUR REAL MARGINS? TELL THE FRANCHISEES ABOUT ALL OF IDQ’S SOURCES OF REVENUE. THEY’RE PAYING FOR IT.

DQOA'S PROPOSAL FOR THE UNIFICATION OF DQOA & USCI SUPPLY CHAIN

- I. The DQOA/DQOC and IDQ/ADQ agree that under certain conditions a single source of supply to the DQ system would be optimum. A DQOA, independent and fully funded for stability and longevity, would be healthy and necessary for unification to be achieved.
- II. The DQOA/DQOC's main objections to the current format of the USCI relate to the definition of the term "cost" and the USCI wanting a blank check in certain areas of operation.
- III. All sales of the USCI, including DQOC products added under a newly unified supply chain, will be assessed a 4.0% margin on DOCK PRICE. All expenses of the operation of the USCI shall be paid for by the USCI from this margin.

All products sold to franchisees, i.e. foods, food packaging and ingredients, are examples of items for which the USCI would receive 4% on said dock price. Included in this 4% margin category, in addition to traditional food and food packaging, shall be OJ compounds and all other OJ products, breading mixes, spice packs, mix stabilizer and vanilla and any ingredient required to be sourced from USCI by manufacturers for the production of approved food and food packaging.

Hamburgers, DQ mix and soft drinks, Arctic Rush base and bottled waters sold by national beverage companies shall not be included in the 4% margin category (see item V and VI below).

DQ LTO's, DQ novelties, RTD cakes shall be capped at a 5% margin.

Colgate Palmolive products shall carry a 0% margin. All other cleaning/maintenance supplies to carry a 4% margin.

- IV. No vendor, manufacturer or distributor of the type of products mentioned in item III above will be allowed to bypass the USCI to sell product, to provide rebates on purchases, pay product allowances, or fees of any type or kind, directly to IDQ/ADQ without official certification and disclosure by the company doing so. Any such funds shall be used to reduce the "Dock Price" of said product(s).
- V. Meat (hamburger) and mix fees shall be at a 1% margin, with USCI paying the cost of all testing required of these products to insure consumer safety at least to the USDA approved levels.
- VI. Soft drink products provided by national beverage companies, including but not limited to fountain drinks, Arctic Rush, bottled water and other bottled drinks, shall be at national account pricing with customary allowances paid directly to franchisees and all marketing contributions paid to NMF. No other fees, allowances, rebates, etc. shall be paid to IDQ/ADQ without certification, and paid funds shall be used to reduce the "Dock Price". USCI will negotiate future national soft drink programs using the leverage of the entire system to negotiate the best pricing and allowances for Dairy Queen franchisees.

- VII. No distributor and/or redistributor fees shall be paid to USCI or to IDQ/ADQ. Any such fees will be certified and used to reduce the “Dock Price” of the product.
- VIII. Extraordinary costs such as tooling, moulds, and major equipment purchases necessary to build and sell a product to the DQ system shall be reimbursed on a per case basis to the interest funding entity. Interest shall be at the current prime interest rate plus 1%, until such time as the expense has been fully amortized. The lending party shall not receive a margin on the interest cost.
- IX. Not covered within the scope of the USCI will be equipment, parts, DQ supply items, uniforms, sportswear, marketing materials and services, building plans, construction services, and insurance. The DQOC shall have the right to compete with IDQ for sales of these items.

OVERSIGHT OF THE UNIFIED SUPPLY CHAIN

The Challenge

To maintain the integrity of the Unified Supply Chain through quality management of USCI and comprehensive oversight by franchisee representatives who are buying into the newly created unified supply chain, by creating a representative franchisee board of directors with oversight capability in all areas affecting franchisee profitability, including the right to audit and challenge USCI management decisions.

The Proposal

Six members of the franchisee community, elected by the entire Dairy Queen system, will assume responsibilities of oversight of the USCI and have full voting authority. A seventh member of the franchisee oversight committee shall be the executive director of DQOA or its designated representative, whose vote should come into play only in the event there is a 3-3 split among the six other members.

Details

1. Initially this committee will be comprised of four members of the current SCAC, two members appointed by the DQOA Board of Directors and the Executive Director of the DQOA.
2. After a reasonable transition period, mutually agreed upon by IDQ and DQOA, all voting members of the franchisee oversight committee shall be elected by the franchisee community under guidelines mutually agreed upon now by the DQOA and IDQ. Election rules also must be mutually agreed upon now by these same parties.
3. During the transition period, the DQOA will pay the expenses of the two DQOA committee members and the Executive Director. After the transition period, all six franchisee oversight committee members' expenses will be paid by the DQOA.
4. The franchisee oversight committee will have the option of accepting the annual financial review of IDQ's independent auditor or conducting an independent audit

by a firm of their choosing. Should the franchisee oversight committee choose to conduct a full audit of the USCI using IDQ's independent auditor, the cost of that audit will be split equally between IDQ and the DQOA. If the oversight committee chooses an auditor other than IDQ's auditor, the DQOA will pay the entire cost of the audit.

5. The franchisee oversight committee shall have access to all supply chain details by individual product, including vendor cost, distributor margin and cost of freight and payments of any type made by the vendor or distributor relating to the product. Access would also be extended to information concerning any marketing or other payments by vendors to IDQ/ADQ, such as convention contributions. Any such excess funds shall be paid to NMF unless otherwise directed by agreement of the franchisee oversight committee and USCI to be used for other defined marketing purposes.
6. The franchisee oversight committee shall have the right to challenge all decisions of the USCI that affect franchisee profitability, using the challenge process suggested in the December 8, 2005 letter from H. Cooper to C. Mooty and agreed to by C. Mooty in his December 9, 2005 letter to H. Cooper. The cost of such a challenge should be split between DQOA and IDQ. Matters affecting franchisee profitability include but are not limited to the vendor RFP process and selection, distributor RFP process and selection, vendor and distributor contributions toward marketing, national conventions and any other payments to IDQ. The appropriate standard for resolving challenges should be that decisions must be made "for the good of the franchisees and the franchisor" as a system. Convention contributions must be utilized for convention matters approved mutually by the USCI and DQOA Board of Directors.
7. Franchisee oversight committee to meet in-person at least quarterly with USCI management.
8. Nothing within the normal course of business of the newly unified supply chain shall be considered confidential and withheld from the franchisee community.

GENERAL TERMS AND CONDITIONS

1. The goal of the newly created Unified Supply Chain should be "to provide all Dairy Queen franchisees with the lowest sustainable costs for product and distribution", while providing proper oversight by a viable DQOA.
2. The parties must agree to a transition period for current DQOC vendors and distributors.
3. Local DAC's choice of distributor should be the determining factor in selection unless that decision negatively affects the profitability and efficiency of that DAC as determined by the challenge process described below.
4. Lyons Magnus and BoDeans must remain as approved vendors for a period of 10 years and shall bear the standard USCI approved label, assuming that reasonable IDQ standards are met.
5. The term of this agreement shall be 25 years with automatic rollover periods, subject to paragraph 6 below.

6. Individual party cancellation for cause, fraud, criminal misconduct shall be referred to the standing arbitrator, who will determine penalties and damages if not agreed to by the parties.
7. Challenge decisions by a mutually chosen independent industry expert shall be subject to binding arbitration should disagreement remain.
8. Breach of this agreement to be referred to the standing arbitrator for assessment of penalties, damages, legal fees and costs.
9. All monies due the DQOA from this agreement shall be paid within thirty days of the previous month end. Failure to do so shall carry the current maximum rate of interest allowed by Minnesota law plus other penalties as the standing arbitrator shall assess.
10. While previously thought that the “CSA” method of problem/challenge solving would be viable; it has proven to not be so. Therefore the standing arbitrator, agreed upon by both parties hereto will become the sole arbitrator of all challenge issues that occur herein. There will be thirty days of expedited pre-hearing discovery, if necessary. Each side will present its issue and response within five days consecutively and the arbitrator will provide a binding decision to this issue within five days thereafter. No hearings, depositions, etc. will be utilized in these instances. Time is deemed to be of the essence.
11. Breach of this agreement by either party shall cause the breaching party to pay the other party’s attorney’s fees and damages as the arbitrator sees fit. Penalties shall apply where deemed appropriate by arbitrator.
12. The DQOA/DQOC shall have a right of first refusal should IDQ desire to sell USCI. Terms of purchase of other party shall be required to be matched but not necessarily in “kind.”

DAIRY QUEEN OPERATORS’ ASSOCIATION

The Challenge

1. To establish a financially sound, 100% independent Dairy Queen Operators’ Association. All parties agreed to this goal as initially stated.

The Solution

Ensuring the welfare of all Dairy Queen franchisees requires sufficient ongoing funding and oversight by a duly elected franchisee Board of Directors.

Proposal

1% of sales, in addition to IDQ/ADQ’s remuneration of the newly combined supply chain allocated toward funding of the Dairy Queen Operators’ Association.

Details

1. Mission of the DQOA is to protect and preserve the welfare of Dairy Queen franchisees while providing support, where appropriate, to the Dairy Queen system.
2. All DQ franchisees within the United States who purchase any product through the USCI will be members of DQOA and entitled to all benefits and privileges of membership without interference from IDQ/ADQ in any manner.
3. By-laws of the DQOA shall remain in effect.
4. USCI will act as an agent for the collection of all funds due to the DQOA. Agent shall be interpreted as commonly done so in the Minnesota statutes. There shall be no fees paid to agent for this service.
5. During a mutually agreed upon transition period, the current Board of Directors of the DQOA shall be expanded by three at large members who will be elected by a vote of the entire franchisee membership. Thereafter, elections will take place as per existing by-laws.
6. Transparency and openness of all DQOA operations shall be DQOA's guiding principle. The DQOA shall have a full audit performed annually at DQOA's expense. Audit results will be available to all DQ franchisee members and IDQ upon request.
7. Should IDQ desire to audit the DQOA with its own independent auditor, IDQ shall bear the expense of such audit.
8. The DQOA shall operate under its own by-laws and Board of Directors separate from the DQOC. However, DQ franchisees may serve on both boards.
9. During the term of this settlement, the DQOA will not compete in USCI's businesses, directly or indirectly except as to previously mentioned items/businesses.
10. After a mutually agreed upon transition period, the DQOA will be responsible for payment of the expenses of the franchisee oversight board.
11. The DQOA will maintain a "special occurrence" account, the maximum amount of which shall be established by the Board of Directors of the DQOA. Should the Board decide that sufficient funds are invested in this account, and there exists proper and sufficient funds for the operation of the DQOA, the Board in writing will authorize USCI to temporarily reduce the DQOA margin on USCI sales.
12. Funds collected or provided by vendors, distributors, etc. for convention usage shall recognize the importance of state association/regional conventions and allocate the sum of a minimum of 25% of these convention funds for such use.

DAIRY QUEEN OPERATORS' COOPERATIVE

1. DQOC will continue under existing by-laws and represent 100% of the U.S. Dairy Queen franchisee community.

2. The Board of Directors of the DQOC shall remain separate and independent from the Board of the DQOA. However, board members may serve on both boards.
3. Elections to the Board of Directors of the DQOC will be in accordance with existing by-laws of the DQOC.
4. The DQOC will not compete with the USCI except as previously stated, i.e. the DQOC will be allowed to source insurance, uniforms, equipment, parts, smallwares, signs, menuboards, construction materials and other goods and services as the DQOC sees fit.
5. DQOC at its option may continue a franchisee dividend program on products sourced through DQOC.
6. Annual audit of the DQOC shall be performed by an independent auditor with copies available to all DQ franchisee members at the cost of the DQOC.
7. Because the DQOC will be competing with IDQ on certain products and services, the Board of Directors of DQOC shall have final authority on the release of confidential competitive information other than to bona fide members of the DQOC.

Rights, privileges and dispute resolution established shall be the same as those agreed to in the DQOA/IDQ agreement executed simultaneously herewith.