

Update on Forced Modernization/Conversion Litigation

The DQOA and its related state associations are continuing to work to protect franchisees from forced concept conversion by ADQ/IDQ. As you know, several state associations – Michigan Dairy Queen Operators' Association, Arizona Dairy Queen Operators' Association, Heartland Dairy Queen Operators' Association, and Northeastern Store Owners' Association (“State Associations”) – filed a lawsuit in the U.S. District Court for the Western District of Michigan on behalf of their members to prevent ADQ/IDQ from forcing member franchisees to “modernize” or otherwise convert their stores toward a design and image that is consistent with either a DQ Grill & Chill or DQ/Orange Julius Treatworks (or whatever is the result of Project Cornerstone).

After the filing of the lawsuit, ADQ/IDQ objected to the State Associations' case on the ground that it was not proper for the State Associations to bring this lawsuit (i.e., they lacked standing). In response, the State Associations argued vigorously that the associations were empowered to represent their members and that sample testimony from various member franchisees was sufficient to establish that ADQ/IDQ could not coerce brand conversion on member franchisees under any existing franchise agreement.

Despite these arguments, and the fact that it would be more economical and efficient to have the State Associations represent the franchisees in one litigation as opposed to having hundreds or thousands of separate lawsuits, on Monday, June 9, 2008, the Court dismissed the State Associations' complaint – but without prejudice. The court held that individual participation by franchisees is necessary, such that the Court could fashion a remedy that is tailored to the specific franchise agreement, and the specific location, instead of

fashioning a broad, system-wide order, as the State Associations had requested. The Court encouraged the filing of individual test cases to challenge ADQ/IDQ's conversion program. The Court expressly left the door open for re-filing of the associational standing suit, at a later date, if circumstances change.

Although the DQOA and the State Associations disagree with the Court's ruling, we are now evaluating our next steps, including the possibilities of (1) appealing the Court's decision; (2) proceeding (in the same case) with a Second Amended Complaint that adds an individual franchisee; (3) filing one or more other test cases on behalf of franchisees who face imminent conversion threats, as the Court recommended; and/or (4) filing arbitration claims.

As we evaluate these alternatives, it is now more important than ever that franchisees who are being pressured to convert/modernize to a new brand or concept (even if you do not have a modernization clause), contact the DQOA or their State Associations ***immediately*** to discuss what options might be available to you. This is especially important if your agreement does not have an arbitration clause. This information is important to ensure that the DQOA and the State Associations can adequately protect your rights.

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June 19, 2008

Ron –

Just received your letter and your comments were right on! I'm glad NESO decided to stand up for the cause. We cannot see this as a defeat and must continue to be vigilant in trying to protect our rights. We need to remember WE are the system as you said. (I hate to think of what happens if the DQOA and competition goes away!!!)

*Fondest regards,
Kathy
DQ Owner - Martins Ferry, OH*

(Attached is a copy of the association letter Kathy references for your review.)



June 18, 2008

Dear Members of the Northeastern State Owners (NESO) Association,

As you know by now the honorable Judge Robert J. Jonker (United States District Judge) has issued an order in the suit filed in Michigan of which our association had joined.

You will see a News Alert on this along with a possible statement from IDQ/ADQ. The intent of this letter is to thank you, the members of the NESO association for your willingness to stand up for your rights and the rights of others on these very serious issues.

The board of directors of Northeastern State Owners NESO association also wants to thank those of you that gave your financial support as well for the legal counsel.

These are not pleasant things to have to do, but when your livelihood is possibly being threatened and the equity of your business is possibly being eroded you have to decide whether or not you will stand up and be heard or possibly see a life's worth of work be diminished in value. We commend you for standing up for what you believe.

Often in our world today we see many things happen that we feel helpless to do anything about. For now we have been heard and will continue to be heard on this and other matters pertaining to our business.

We at the state and local levels have always believed in facility reinvestment, so it seems a little unfair to question our intentions for bringing and joining this suit as somehow malicious or intending to harm the Dairy Queen system. After all we are the Dairy Queen system. Not only are we the system, we have considerable investment of time (decades in many cases) and financial resources (collectively in the billions of dollars).

It was not our will it be the intention of the DQOA to take away any IDQ/ADQ rights as it pertains to the modernization clauses in their/our contracts, but to bring clarity to what these rights actually are.

Do they have the right to change the name of the brand we all bought into?
Do they have the right to fundamentally and unilaterally change the business model into which we all invested our lives and resources?

That's what we were asking the courts to decide.

The courts decision isn't that we Dairy Queen operators don't have the right to ask these questions but only that our association can't bring this case on behalf of our members. There have been several remedies left on the table that the DQOA will look into over the next several weeks.

We sincerely thank you for supporting your rights and the rights of others. Collectively we will continue to be heard.

Sincerely,
NESO BOARD OF DIRECTORS
Ron Rapp President NESO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN DAIRY QUEEN
OPERATORS' ASSOCIATION,
et al.,

Plaintiffs,

CASE NO. 1:08-CV-36

v.

HON. ROBERT J. JONKER

INTERNATIONAL DAIRY QUEEN,
Inc., a Delaware corporation, and
AMERICAN DAIRY QUEEN
corporation, a Delaware corporation,
Defendants.

ORDER

This matter is before the Court on Defendants' Motion to Dismiss Plaintiffs' Complaint for Lack of Subject Matter Jurisdiction (docket # 20). The Court heard oral argument on the motion on June 9, 2008 (docket # 44). Based on its review of the record, and for the reasons stated in detail in the hearing, the Court concludes that dismissal of Plaintiffs' Amended Complaint (docket # 11) without prejudice is warranted.

At the time of hearing, Plaintiffs' Motion for Leave to file Second Amended Complaint (docket # 36) was pending, and the time for response had not yet expired. In light of the Court's ruling on the motion to dismiss, Plaintiffs are re-evaluating whether they wish to proceed with the motion to amend. Accordingly, **IT IS ORDERED**:

1. Defendants' Motion to Dismiss Plaintiffs' Complaint for Lack of Subject Matter Jurisdiction (docket # 20) is **GRANTED** to the extent that Plaintiffs' Amended Complaint (docket # 11) is **DISMISSED WITHOUT PREJUDICE** for the reasons recited by the Court at the hearing, and is **DENIED** in all other respects (including, in particular, its request for dismissal with prejudice);
2. Plaintiffs shall notify Defendants as soon as practicable, and in any event before June 16, 2008, whether they will withdraw or proceed with the pending Motion for Leave to file Second Amended Complaint (docket # 36).

Dated: June 11, 2008

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE