

DDIFO Concerned about Litigation at Dunkin' Brands

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The DD Independent Franchise Owners, which represents the largest association of Dunkin' Donuts franchise owners in the U.S., is concerned that publicity surrounding lawsuits against franchisees is ultimately damaging to the health and reputation of the Brand.

A recent article on the franchise industry news website Blue Mau Mau.org cites internal documents and quotes with attendees to a 2000 American Bar Association at which Dunkin' Brands' Chief Legal Counsel in charge of Loss Prevention, Stephen Horn, spoke about the company's aggressive tactics to conduct surveillance on franchisees suspected of underreporting sales and then litigate them.

The article quotes Horn's speech, 'One of the best ways to gather evidence that will potentially have some impact in court is to conduct surveillance of the franchise.' The article goes on to quote Horn saying the best surveillance is not necessarily to generate evidence for court, but to provide ammunition for a confrontation meeting with the franchisee.

According to Nation's Restaurant News and the Boston Business Journal, Dunkin' Brands filed 350 lawsuits against franchisees between January 2000 and September 2002 compared to 12 similar suits filed by McDonald's in the same span. The same publications say Dunkin' Brands filed 157 lawsuits against franchisees between January 2006 and June 2007 compared to 5 by Subway.

DDIFO chairman Kevin McCarthy says, 'Our organization is concerned that Dunkin' Donuts will become as well known for its lawsuits as for its coffee and food products. In light of the competition our members face for loyal customers, we believe the Company should be sensitive of its image related to these matters. More time helping franchisees and less time investigating them would be better for all stakeholders.'

In its response to the Blue Mau Mau article, Dunkin' Brands spokesman Stephen Caldeira says, 'Our record is extraordinarily successful because of the care we take in bringing cases that are investigated properly.'

But, in comments attributed to Horn's 2000 speech, Blue Mau Mau wrote, 'Dunkin's investigations go beyond that of the franchisee's business. Horn expressed that their lifestyles and attitudes should also be investigated.' Horn is said to have claimed that a franchisee that drives 'a late model Mercedes Benz' might be underreporting sales to the Brand.

DDIFO Chairman Kevin McCarthy says, 'Targeting franchisees because of their lifestyle is particularly troublesome. No franchisee should be under suspicion or treated differently for aspiring to the American Dream.'

DDIFO members advocate protecting the integrity of the Brand. The DDIFO recognizes that, on occasion, a franchisee may engage in improper activity including possibly underreporting sales to the Brand. But, the DDIFO strongly opposes the use of intimidation tactics as part of any internal investigation.

'We would like to see more reason and balance brought to this situation,' says Mark Dubinsky, President of the DDIFO. 'To our knowledge, the Dunkin' system is the most litigious major QSR system out there. We feel that litigation and confrontation should be the last alternatives used when underreported sales are suspected. The DDIFO would be open to exploring alternatives like a franchisee/peer review panel to work with the Brand in assessing what steps should be taken and whether litigation of a franchisee is warranted.'

Dubinsky continues: 'We believe Dunkin' Brands must find a way to protect Brand Equity while also teaching franchisees how to best to comply with their business obligations. Other successful QSR franchisors have figured out how to minimize litigation in their respective systems. Dunkin' Brands should aspire to join the ranks of these leading franchisors in terms of franchisee relations and using litigation against its franchisees as tactic of last resort.'

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