

DEPARTMENT OF CONSUMER AFFAIRS  
CITY OF NEW YORK

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THE DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

**ASSURANCE OF  
DISCONTINUANCE**

-against-

**Violation No.: CL 73969**

DUNKIN' BRANDS, INC.,

Respondent.  
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1. The New York City Department of Consumer Affairs (the "Department") has commenced an investigation pursuant to the New York City Charter Section 2203 and New York City Administrative Code (the "Code") Sections 20-700, et seq. (the "Consumer Protection Law"), into Respondent DUNKIN' BRANDS, INC.'s advertisements described in Paragraph 6 below.
2. Respondent consents to this Assurance of Discontinuance ("Assurance") with the Department, and the Department accepts this Assurance in lieu of instituting an action for violations of the Consumer Protection Law, pursuant to the Code Section 20-704.

I. DEFINITIONS

3. For purposes of this Assurance, the following definitions shall apply:
  - a. "Respondent" shall mean Dunkin' Brands, Inc., and its parent companies, subsidiaries and affiliates, including, but not limited to, Dunkin' Donuts LLC, Dunkin' Donuts USA LLC, DD IP Holder LLC and Dunkin' Donuts Franchising LLC.

- b. “Advertisements” shall mean all labels, packaging, promotional materials, statements, visual descriptions, or other representations of any kind promoting the price of Dunkin’ Donuts packaged coffee, disseminated in print, orally, or electronically by Respondent to consumers in New York City, including, but not limited to, mailings, coupons, postcards, flyers, signs, billboards, banners, newspapers, magazines, circulars, pamphlets, catalogues, store displays, letters, handbills, television advertisements, internet advertisements, and/or radio advertisements.

## II. DEPARTMENT’S ALLEGATIONS

4. Dunkin’ Brands, Inc. is a Delaware corporation, which, through its wholly-owned subsidiary Dunkin’ Donuts Franchising LLC, licenses franchisees to operate Dunkin’ Donuts franchises in New York City and elsewhere.
5. There are over 460 Dunkin’ Donuts locations in New York City that are independently owned and operated by Respondent’s franchisees.
6. On or about October 3, 2010, Respondent caused to be published an advertisement and coupon for four (4) pounds of coffee for at-home consumption for \$19.99 “plus tax” as a free-standing insert (“FSI”) in the following fourteen (14) publications in or around New York City:
- a. The Bronx Times
  - b. The Journal News
  - c. Courier Life Publications
  - d. The Brooklyn Paper
  - e. Caribbean Life
  - f. El Diario
  - g. Food & Drug Plus
  - h. TimesLedger Newspapers
  - i. Food & Drug Plus – City
  - j. New York Post

- k. Wall Street Journal
- l. Staten Island Advance
- m. Newsday
- n. The Star-Ledger

The coupon was valid until October 31, 2010.

- 7. Bags of coffee for at-home consumption are not taxable items in New York State.
- 8. The FSI had the potential to mislead consumers into believing that coffee for at-home consumption is a taxable item. Moreover, consumers may have been charged more than the sale retail price of \$19.99 for four pounds of coffee.
- 9. Respondent's FSI thus violated the Consumer Protection Law.

### III. INJUNCTIVE RELIEF

- 10. Respondent shall comply with all applicable provisions of the Consumer Protection Law and Rules with respect to Advertisements, provided that such provisions are in effect at the time that the applicable Advertisements are disseminated.
- 11. Respondent shall not expressly or by implication represent in Advertisements that non-taxable items are subject to federal, state, or local taxes.
- 12. Where Advertisements are to be published or applicable in multiple locations with differing taxation requirements, and the Advertisements advertise a price along with the words "plus tax," if the advertised items are not subject to tax in New York City, Respondent shall expressly indicate in a clear and conspicuous manner, that such items may not be subject to tax.
- 13. In the event that any statute, regulation, or rule pertaining to the subject matter of, or any provision in, this Assurance is amended, modified, enacted, or promulgated such that the statute, regulation, or rule is in conflict with any

provision of this Assurance, Respondent may comply with such statute, regulation, or rule, and such action shall constitute compliance with this Assurance.

#### IV. TRAINING

14. No later than thirty (30) days after the date that Respondent receives this Assurance executed by the Department (the "Effective Date"), Respondent shall provide a copy of this Assurance to all of (a) Respondent's employees, independent contractors, and advertising agencies, who are then currently responsible for developing Respondent's Advertisements; and (b) Respondent's franchisees operating Dunkin' Donuts franchises in New York City.
15. No later than thirty (30) days after the Effective Date, and on an annual basis thereafter, Respondent shall provide a written notice to its franchisees operating Dunkin' Donuts franchises in New York City reminding each of them to obtain and familiarize itself and its employees with sales tax laws applicable to New York City. Such notice shall explain that such information is available from the New York State Department of Taxation and Finance on their website at <http://www.tax.ny.gov>.
16. No later than thirty (30) days after the Effective Date, and on an annual basis thereafter, Respondent shall provide a written notice to its franchisees operating Dunkin' Donuts franchises in New York City reminding them that all Advertisements published by them must be approved by Respondent before they are published.

17. Respondent's employees shall not make any statements to consumers that are inconsistent with the restrictions on Advertisements in this Assurance.
18. Respondent's obligations pursuant to this Section IV, Paragraphs 14-17 shall expire four (4) years after the Effective Date.

V. COMPLIANCE

19. Respondent shall submit to the Department a sworn affidavit with supporting documentation attesting to Respondent's compliance with this Assurance within three (3) months from the Effective Date.
20. Respondent shall comply with the provisions of this Assurance within thirty (30) days of the Effective Date.
21. Respondent shall use its best efforts to produce copies of Respondent's Advertisements in its possession within thirty (30) days of the Department's request.
22. Respondent shall use its best efforts to produce copies of any complaints in its possession that Respondent receives regarding Respondent's Advertisements within thirty (30) days of the Department's request.
23. Respondent shall use its best efforts in good faith to resolve all consumer complaints filed with the Department regarding the Advertisements within twenty (20) days of receipt of copies of said complaints from the Department, but in all instances, Respondent shall use its best efforts to respond in writing to the Department regarding such consumer complaints within thirty (30) days of receipt of any complaints.

24. Respondent shall use its best efforts to produce copies of any other documents in its possession regarding the Advertisements within thirty (30) days of the Department's request.
25. Respondent's obligations pursuant to this Section V, Paragraphs 19-24 shall expire four (4) years after the Effective Date.

#### VI. MISCELLANEOUS

26. The Department agrees that by executing this Assurance, the Department waives the right to institute an action or proceeding (including, without limitation, for violation of the Consumer Protection Law) based on the facts alleged above in Paragraphs 4 - 9, subject to the limitations described below in Paragraph 32.
27. This Assurance is for settlement purposes only. By entering into this Assurance, Respondent is not admitting to any facts, wrongdoing, violation of any law, or liability.
28. There is no private right of action created by this Assurance. This Assurance does not, however, affect the right of individual consumers to bring a civil action for relief.
29. The acceptance of this Assurance by the Department shall not be deemed approval by the Department of any of Respondent's business practices, and Respondent shall make no representation to the contrary.

#### VII. PENALTIES AND OTHER TERMS AND CONDITIONS

30. Respondent shall provide to the Department, within ten (10) business days of the Effective Date, a check in the amount of \$117,500 made payable to the New York City Department of Consumer Affairs, and delivered to the New York City

Department of Consumer Affairs, Legal Division, Research and Investigations Unit, Attn: Jennifer A. Huber, Esq., 42 Broadway, 9th Floor, New York, New York 10004.

31. If Respondent's payment is late, the Department shall add a late fee of \$100.00 to the amount owed by the Respondent.
32. Respondent understands that a violation of this Assurance shall be treated as a violation of the Consumer Protection Law pursuant to Section 20-704 of the Code and may be subject to all the penalties provided therefor.
33. This Assurance shall constitute the final disposition of the above-captioned matter only if this Assurance is fully executed and the settlement amount is received by the Department by September 15, 2011.
34. This Assurance shall constitute a final order pursuant to Title 6, Section 6-42(c) of the Rules of the City of New York, and Respondent agrees to this Assurance as such.

Agreed to for Respondent Dunkin' Brands, Inc. by:

TOM MANCHESTER  
Vice President, Field Marketing

  
Signature

Date: 9/1/11

Accepted for Jonathan Mintz,  
Commissioner of Consumer Affairs  
for the City of New York by:

  
Research and Investigation Unit

  
Signature

Date: 9/6/11