

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

AMERICAN DAIRY QUEEN)
CORPORATION, a Delaware)
Corporation,)
))
Plaintiff,)
))
vs.)
))
JOHN McMURRAY and)
ESTHER McMURRAY,)
))
Defendants.)

Case Number: _____

**COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTIVE RELIEF**

Plaintiff American Dairy Queen Corporation (“ADQ”), for its Complaint against Defendants John and Esther McMurray, states and alleges as follows:

IDENTIFICATION OF PARTIES

1. ADQ is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business located at 7505 Metro Boulevard, Edina, Minnesota. ADQ is the franchisor of the DAIRY QUEEN® franchise system.

2. Upon information and belief, Defendants John and Esther McMurray are citizens and residents of the state of Missouri. At all times relevant to this action, Defendants John and Esther McMurray have been the owners and operators of a DAIRY QUEEN® store located at 2635 Independence Avenue, Kansas City, Missouri (“Defendants’ Store”). Defendants John and Esther McMurray are ADQ franchisees for Defendants’ Store pursuant to a Sub-Franchise Agreement Covering the Operation of Dairy Queen Store dated April 7, 1952 (the “Franchise Agreement”). Defendants are licensed to use many of ADQ’s trademarks and service marks. Menu items at Defendants’ Store include soft serve, treats, cold beverages, hot dogs and chili dogs.

JURISDICTION AND VENUE

3. Through this action, ADQ seeks to enjoin Defendants' unlawful trademark infringement under the Lanham Act of 1946, 15 U.S.C. § 1051, *et seq.* This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331, as ADQ's claims arise under federal law. This Court may also exercise jurisdiction over this matter pursuant to 28 U.S.C. § 1332, as complete diversity of citizenship exists between the parties, and the value of the rights ADQ seeks to protect exceeds \$75,000.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, as Defendants reside within this District, and the events giving rise to ADQ's claims occurred within this District.

FACTUAL BACKGROUND



A. The DAIRY QUEEN® Marks and the DAIRY QUEEN® Franchise System




5. The mark DAIRY QUEEN® was originated by ADQ's predecessor, McCullough's Dairy Queen, in 1940. Since its origination, the DAIRY QUEEN® trademark and related marks (collectively, the "DAIRY QUEEN® Marks") have been used continuously by ADQ, its predecessors, and those that ADQ and its predecessors have franchised or licensed to use them. For decades, the DAIRY QUEEN® Marks have been used in connection with the sale of soft-serve, frozen and semi-frozen dairy products, frozen and semi-frozen drink products, cooked food products, and other products and services throughout the United States and in several foreign countries. Currently, over 5,800 independently owned DAIRY QUEEN® restaurants operate throughout the United States and abroad. DAIRY QUEEN® restaurants operate under franchise or license agreements with ADQ or one of ADQ's territorial subfranchisors.



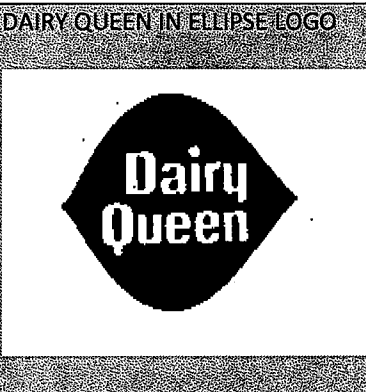


6. ADQ and its affiliates are the owners of the federally registered DAIRY

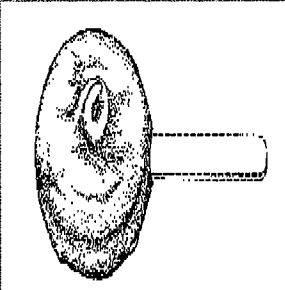
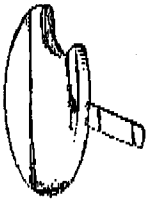

QUEEN® Marks that are licensed for use in DAIRY QUEEN® stores. The federally registered



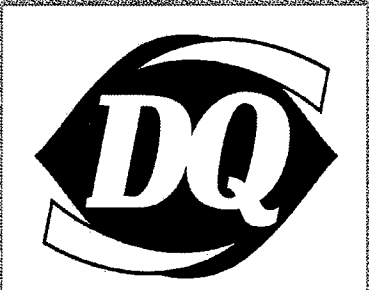
DAIRY QUEEN® Marks include, but are not limited to, the following:


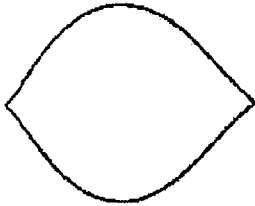
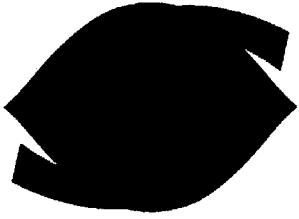

MARK	REG. NO.	REG. DATE	CLASS	GOODS/SERVICES
ARCTIC RUSH	3,204,992	6-Feb-07	32	Flavored semi-frozen slush type soft drinks
BLIZZARD	895,139	21-Jul-70	30	Milk shakes and semi-frozen ice milk and ice cream confections.
BLIZZARD	1,458,987	29-Sep-87	7	Flavor blender machine for frozen treats.
BLIZZARD	1,503,396	6-Sep-88	42	Restaurant services.
BLIZZARD and Design 	559,844	10-Jun-52	30	Heavy bodied milkshakes.
BROWNIE EARTHQUAKE	2,473,521	31-Jul-01	30	Dessert consisting primarily of ice cream and a brownie for consumption on or off the premises.
BUSTER BAR	848,260	30-Apr-68	30	Ice cream and ice milk in bar form.
CHEESEQUAKE	2,921,580	25-Jan-05	30	reduced fat ice cream confectionary treats
CHILI MELTDOWN	3,362,084	1-Jan-08	30	Sandwiches
CHOCOLATE CORRUPTION	3,082,638	18-Apr-06	30	Frozen confections
CHOCOLOSSAL	3,175,435	21-Nov-06	30	Frozen confections
COOL TREATS Stylized 	1,813,208	21-Dec-93	42	Restaurant services.


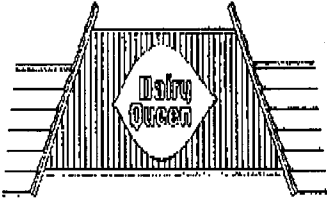
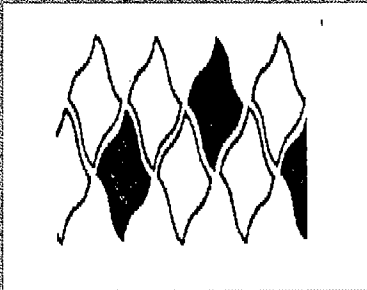
CROSSING CURL DESIGN 	2,183,417	25-Aug-98	30	ice milk, reduced fat ice cream and frozen yogurt confections in cone, cup and molded form, with and without flavorings and toppings such as hot fudge, chocolate, strawberry and pineapple.
DAIRY QUEEN	728,894	20-Mar-62	30	Ice cream and frozen confections in cone, cup, and bar form.
DAIRY QUEEN	776,277	1-Sep-64	30	Sundaes, strawberry short cake, chocolate bars, ice cream or ice milk cones, ice cream sandwiches, parfay sundaes, food stabilizers, pies, tarts, milk shakes, and mixes both liquid and solid for the making of ice milk and ice cream products.
DAIRY QUEEN	801,849	11-Jan-66	11	Semi-frozen ice cream and ice milk dispenser, walk-in cooler, freezing cabinets, refrigerated mix tanks, ice cream and ice milk shake freezers, and cone racks.
DAIRY QUEEN	957,999	24-Apr-73	35	Fast food and franchising services--namely, rendering technical and promotional assistance in the establishment and/or operation of businesses specializing in the sale of fast foods
DAIRY QUEEN	1,596,949	15-May-90	42	Restaurant services; retail soft serve ice milk confectionery store services; retail ice cream confectionery store services.
DAIRY QUEEN AND CONE DESIGN 	954,524	6-Mar-73	30	Ice milk and ice cream confections in cone, cup and molded form, with and without flavorings and toppings such as hot fudge, chocolate, strawberry, and pineapple.
DAIRY QUEEN IN ELLIPSE LOGO 	763,209	14-Jan-64	30	Ice cream and frozen confections in cone, cup, bar, and package form.


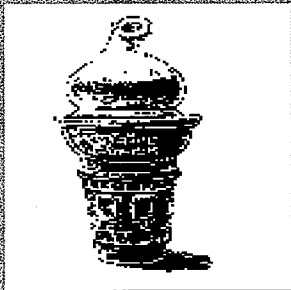
DAIRY QUEEN IN ELLIPSE LOGO	804,002	15-Feb-66	30	Hamburger sandwiches, barbecue sandwiches, and hot dog sandwiches.
				
DAIRY QUEEN IN ELLIPSE LOGO	811,416	19-Jul-66	25	Flavored carbonated soft drinks.
				
DAIRY QUEEN IN ELLIPSE LOGO	1,476,339	9-Feb-88	42	Restaurant services.
				
DAIRY QUEEN IN ELLIPSE LOGO	1,563,480	31-Oct-89	25	Clothing, namely, aprons, caps, award jackets, wind-resistant jackets, baseball jerseys, golf shirts, polo shirts, rugby shirts, sweatshirts, t-shirts and visors.
				
DAIRY QUEEN stylized	728,531	13-Mar-62	11	Machine for freezing and dispensing a semi-frozen dairy product.
				


DILLY	608,408	5-Jul-55	30	Ice cream bars and ice milk bars.
DILLY BAR DESIGN 	1,146,560	27-Jan-81	30	Frozen confections-namely frozen ice cream and ice milk bars which bars are coated with chocolate or other flavors.
DILLY BAR DESIGN (SHOWING BITE) 	1,115,863	27-Mar-79	30	Chocolate covered ice milk and ice cream bars.
DQ	978,236	5-Feb-74	30	Ice cream sandwiches, ice milk, ice cream products--namely, sodas, sundaes, floats, parfays, cones, and malts; ready to drink coffee, flavored orange drink, ready to drink hot chocolate, ready to eat hamburgers, ready to eat cheeseburgers, ready to eat hot dogs, ready to eat pork sandwiches
DQ	951,528	23-Jan-73	35	Franchising services--namely, rendering technical assistance in the establishment and/or operation of business featuring the sale of frozen custard.
DQ	960,525	5-Jun-73	30	Flavor concentrates, ice cream, and ice milk sandwiches.
DQ	965,673	7-Aug-73	32	Lemonade, root beer; and cola, orange, lemon and lime flavored soft drinks.
DQ	3,211,469	20-Feb-07	43	Carry-out restaurants; restaurant services
DQ in Color Ellipse Logo (2007) 	3,369,016	15-Jan-08	30	Frozen confections, ice cream, sundaes, shakes, ice cream cones, ice cream bars, ice cream cakes, frozen flavored ice, parfays; hamburger sandwiches, hot dogs and chicken sandwiches

DQ IN ELLIPSE LOGO	976,938	15-Jan-74	29	<p>Hamburger sandwiches of all types, hot dog sandwiches of all types, meat barbeque sandwiches, fish sandwiches, cooked fish and potatoes, cooked fish, cooked chicken, french fried potatoes, fried onion rings, pork tenderloin sandwiches, chicken sandwiches, tacos, enchiladas, clam sandwiches, cooked clams and potatoes, cooked shrimp, cooked steaks, coffee whitener, pizza, soup, milk, mayonnaise, tartar sauce, sauce for meats, sugar, chili con carne, diced onions, cheese, vegetable shortening, coffee, tea, hot chocolate; condiments--namely, catsup, mustard, pickles, relish, salt, pepper</p>
			30	<p>Ice cream, ice milk, frozen confections, sundaes, strawberry shortcake, chocolate bars, parfaits, food stabilizers, pies, tarts, milk shakes, liquid and solid mixes for making ice cream and ice milk, condensed milk, evaporated milk; vanilla, chocolate and butterscotch toppings for use with ice cream and ice milk, fruit flavored food syrups, and malt syrup bases for ice cream and ice milk drinks.</p>
DQ IN ELLIPSE LOGO	1,494,685	28-Jun-88	42	Restaurant services.
			25	<p>Clothing, namely, aprons, caps, jackets, shirts, sweatshirts, t-shirts and socks.</p>
DQ in Ellipse Logo (2007)	3,666,478	11-Aug-09		
				

DQ IN MODIFIED ELLIPSE LOGO 	3,046,169	17-Jan-06	43	Restaurant services; take-out restaurant services
DQ RESTAURANT	984,155	14-May-74	42	Restaurant services.
DREAM PIE	3,188,214	19-Dec-06	30	Milk shakes and semi-frozen ice milk and ice cream confections containing traditional pie flavors and/or ingredients
EAT, DRINK AND BE MERRY	901,962	3-Nov-70	35	Confectionery fountain and food services.
ELLIPSE LOGO DESIGN 	979,090	19-Feb-74	42	Restaurant services.
Ellipse Logo Silhouette 	3,695,181	13-Oct-09	43	Restaurant services; Take-out restaurant services.
GEORGIA MUD FUDGE	2,554,725	2-Apr-02	30	Frozen confections
GRILLBURGER & Design 	3,081,815	18-Apr-06	30	sandwiches, namely hamburgers

HOT EATS COOL TREATS stylized 	1,818,601	25-Jan-94	42	Restaurant services.
IMAGE BOX (DAIRY QUEEN IN ELLIPSE LOGO) 	1,778,055	22-Jun-93	42	Restaurant services.
IRREGULAR RECTANGULAR DESIGN 	949,432	26-Dec-72	30	Ice cream sandwiches, ice milk, ice cream products—namely, sodas, sundaes, floats, parfaits, cones, and malts; ready to drink coffee; fresh milk, ready to drink hot chocolate
MISTY	1,886,694	28-Mar-95	32	Non-carbonated soft drinks for consumption on or off the premises.
MOOLATTE	2,910,892	14-Dec-04	30	ice blended coffee-based beverages containing reduced-fat ice cream and flavorings
MR. MISTY	699,518	14-Jun-60	30	Flavoring syrup; a frozen confection; a fruit or syrup topping for ice cream and ice milk; flavor ingredients for the making of ice cream or ice milk mixes.
MR. MISTY	813,437	23-Aug-66	11	Freezer-type machine for preparing and dispensing a semi-frozen confection drink.

MR. MISTY DESIGN 	825,294	7-Mar-67	11	Freezer-type machine for preparing and dispensing a semi-frozen confection drink.
ONE OF LIFE'S LITTLE PLEASURES	836,897	10-Oct-67	35	Advertising and promoting the sale of goods of others.
PEANUT BUSTER	1,191,280	2-Mar-82	30	Frozen ice cream or ice milk product with chocolate topping and peanuts for consumption on or off the premises.
PEANUT BUTTER BASH			30	Frozen confections
PECAN MUDSLIDE	3,157,675	17-Oct-06	30	Frozen confections
PICTORIAL REPRESENTATION OF THE CONE WITH THE CURL ON TOP (New cone design) 	1,343,007	18-Jun-85	30	Ice milk and ice milk confections in cone, cup and molded form, with and without flavorings and toppings such as hot fudge, chocolate, strawberry, pineapple etc.
ROYAL FUDGE 'N' CAKE	1,842,471	28-Jun-94	30	soft serve ice milk with cake, chocolate hot fudge, whipped topping and butterscotch fudge topping or caramel fudge topping or strawberry topping or cherry topping, for consumption on or off the premises.
ROYAL TREAT	1,763,411	6-Apr-93	42	Restaurant services featuring soft serve ice milk confectionary treats and ice cream confectionary treats.
ROYAL TREATS	2,003,084	24-Sep-96	42	Restaurant services featuring soft serve reduced fat ice cream confectionery treats and ice cream confectionery treats.
SCRUMPDILLYISHUS	3,432,548	20-May-08	43	Restaurant services
SO GOOD IT'S RIDQULOUS			43	Restaurant services; Take-out restaurant services
STARKISS	2,764,390	16-Sep-03	30	Frozen flavored confections in molded form on a stick
THE CONE WITH THE CURL ON TOP	952,201	30-Jan-73	30	Ice milk and ice cream confections in cone, cup and molded form, with and without flavorings and toppings, such as hot fudge, chocolate, strawberry, pineapple, etc.

THE ORIGINAL BLIZZARD ONLY AT DQ and Design 	2,693,918	4-Mar-03	30	Frozen reduced-fat ice cream soft serve for consumption on and off the premises consisting primarily of frozen reduced-fat ice cream with one of more of the following toppings, namely, candy, cookies, syrup, nut or fruit toppings.
TREAT CAPITAL OF THE WORLD	3,503,017	16-Sep-08	43	Carry-out restaurants; restaurant services
			42	Restaurant and retail snack and food shop services.
WE TREAT YOU RIGHT	1,173,729	13-Oct-81	42	Restaurant services.
WHAT'S YOUR DEAL?	3,713,339	17-Nov-09	43	Restaurant services; Take-out restaurant services.

7. ADQ and its predecessors have spent many millions of dollars advertising and promoting the DAIRY QUEEN® Marks throughout the United States, including in the state of Missouri.

8. The DAIRY QUEEN® Marks are distinctive and famous.

9. ADQ and its predecessors have spent substantial amounts of time and money to maintain and improve the DAIRY QUEEN® franchise system. These substantial efforts include, but are not limited to: (1) the development, improvement, and inspection of equipment used in the production and sale of DAIRY QUEEN® products; (2) the maintenance of product quality; (3) the development of methods of improving the quality, taste, and uniformity of products sold by DAIRY QUEEN® franchise operators throughout the United States and abroad; (4) the development of uniform designs and markings for containers in which products are sold to consumers; and (5) the training and education of franchisees or their managers in the proper operation and maintenance of DAIRY QUEEN® stores.

10. As a result of the efforts and expenditures of ADQ and its predecessors, the DAIRY QUEEN® Marks have become associated in the minds of the consuming public with

uniform products of consistently high quality, sold only in clean and attractive surroundings, and operated by persons following substantially identical sales and operating methods and procedures.

11. All franchisees within the DAIRY QUEEN® franchise system receive from ADQ various communications and periodic system bulletins that set forth specific minimum standards to which DAIRY QUEEN® franchisees are required to abide, regarding, among other things, minimum standards of health, sanitation, and safety applicable to the operation of every DAIRY QUEEN® store.

B. ADQ's Monitoring and Control of the Quality of Products and Services Sold Under the DAIRY QUEEN® Marks

12. To further ensure the uniformity and quality of products and services sold under the DAIRY QUEEN® Marks, and to ensure that DAIRY QUEEN® stores are operated and maintained in an attractive, safe, and sanitary manner, ADQ and its predecessors have continuously devoted substantial amounts of time and money to systemwide inspection and compliance programs. For many decades, ADQ's inspection and compliance program has consisted of periodic visits, inspections, and evaluations of individual DAIRY QUEEN® stores by trained ADQ personnel. Before approximately June 2009, the program was known as the QVSC [Quality, Value, Service and Cleanliness] Program; since that time, the program has been known as the PRIDE [Personal Responsibility in Delivering Excellence] Program.

13. The monitoring, evaluation, and required compliance with minimum standards of health, sanitation, and safety in DAIRY QUEEN® stores through ADQ's PRIDE program is essential to maintaining the valuable reputation and goodwill associated with the DAIRY QUEEN® franchise system and the DAIRY QUEEN® Marks.

14. The goodwill and reputation associated with the DAIRY QUEEN® Marks are impaired when any DAIRY QUEEN® franchisee fails to maintain ADQ's minimum standards of health, sanitation and safety and operates an unsanitary or unsafe business under the DAIRY QUEEN® Marks.

C. Defendant's Repeated Failure to Comply with ADQ's Minimum Standards of Food Safety and Cleanliness

15. Before 2011, ADQ's annual QVSC evaluations and PRIDE checks at Defendants' Store sometimes showed Defendants' Store to be in violation of certain of ADQ's minimum standards. The 2011 evaluation process, however, revealed a significant deterioration in the overall condition of Defendants' Store, even since the last evaluations conducted in 2010. This considerable decline, particularly as related to the conditions and operations at Defendant's Store relating to food safety and sanitation, have resulted in an environment that not only fails to meet ADQ's minimum standards for cleanliness and food safety, but also threatens the goodwill associated with ADQ's trademarks, and, most importantly, poses potential health risks to consumers.

16. On August 9, 2011, ADQ representatives Jim Weida and Terry Turner conducted a PRIDE Check evaluation of Defendants' Store. That inspection revealed multiple serious violations of ADQ's minimum standards, including potentially dangerous conditions relating to food safety and sanitation. Unacceptable, unsafe and unsanitary conditions directly related to food preparation and service at Defendants' Store as of August 9, 2011, included, but were not limited to: mold, mildew, rust, and frost buildup in and around the coolers and freezers; mold, mildew and rust in and around the soft-serve mix hoses and pumps; food and coolers kept at improper and potentially unsafe temperatures; a complete lack of cleaning and sanitation supplies and processes; mixers, coolers, display cases, food warmers, countertops, and milk

dispensers in poor repair; and food soil, product buildup, sticky residue, and general dirt, filth, and a state of disarray throughout the interior and exterior grounds of the Store.

17. Attached as **Exhibit A** are true and correct copies of the PRIDE Check evaluations describing the conditions at Defendants' Store on August 9, 2011, and identifying the nature of the violations; attached as **Exhibit B** are true and correct copies of photographs of some of the conditions at Defendants' Store that same day. Many of the conditions depicted in the photographs were visible to customers, delivery and service personnel, and other members of the public.

18. After completing the August 9 inspection, Weida and Turner met with Defendants at their Store to provide them with a copy of the unsatisfactory PRIDE check results, to express their concerns about the number and nature of the violations, and to stress to the Defendants the critical and immediate need for their remediation of the most serious violations.

19. More than ten days later, Defendants had not remediated any of the violations noted at the August 9 inspection.

20. On August 22, 2011, ADQ issued to Defendants a Notice of Default, which Weida hand-delivered to Defendant Ethel McMurray on that date. In the Notice of Default, ADQ again identified the multiple unacceptable conditions at the Store; ADQ directed that Defendants close the Store immediately in light of the Defendants' violations of minimum standards of food safety and cleanliness; and ADQ directed that Defendants' Store not reopen to the public unless and until Defendant's Store meets ADQ's cleanliness and food safety standards. Attached as **Exhibit C** is a true and correct copy of the August 22 Notice of Default and its attachments.

21. At the same time that he hand-delivered the August 22 Notice of Default, Weida orally advised Defendant Ethel McMurray of ADQ's directive to close the Store immediately. In

response, Defendant Ethel McMurray advised Weida that she would not close the Store, and she ordered Weida to leave the premises.

22. As of August 18, 2011, Defendants' Store was open, operating, and continuing to serve food to the public.

23. Defendants' actions have caused and continue to cause irreparable harm to ADQ, including irreparable harm to the reputation and goodwill associated with the DAIRY QUEEN® Marks. Granting the requested injunctive relief would not harm any third parties and would advance the public interest.

COUNT I
Trademark Infringement

24. The allegations of paragraphs 1 through 23 are hereby incorporated by reference.

25. Defendants' use in commerce of the DAIRY QUEEN® Marks beyond the scope of their license, and without ADQ's consent, is likely to confuse or deceive the public as to whether Defendants' unauthorized activities are licensed, franchised, sponsored, authorized, or otherwise approved by ADQ. Defendants' continued unauthorized use of the DAIRY QUEEN® Marks constitutes trademark infringement under 15 U.S.C. § 1114.

26. As a result of Defendants' conduct, ADQ has suffered and is continuing to suffer irreparable injury, and has incurred and is continuing to incur monetary damages in an amount yet to be determined.

COUNT II
False Designation of Origin

27. The allegations of paragraphs 1 through 26 are hereby incorporated by reference.

28. Defendants' above-referenced conduct constitutes false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

29. By reason of the foregoing, ADQ has suffered and continues to suffer irreparable damage to its reputation and goodwill for which ADQ has no adequate remedy at law. In addition, ADQ has been damaged financially and will continue to be so damaged, until Defendants cease their intentional unlawful conduct.

COUNT III
Breach of Contract

30. The allegations of paragraphs 1 through 29 are hereby incorporated by reference.

31. The Franchise Agreement contains acknowledgments and agreements by the Defendants concerning the importance of maintaining ADQ's standards for health, sanitation, and food safety. For example, the applicable paragraphs of the Franchise Agreement include:

Paragraph a.: Licensor herewith grants to Licensee. . . the right and privilege to the use of the name "Dairy Queen" in connection with the retail outlet or to the use of the name "Dairy Queen" in connection with the retail outlet or store which Licensee is to establish under the provisions of this agreement at 2635 Independence Avenue, Kansas City, Missouri, on property legally described as above set out, subject to regulations and law of Kansas City, Missouri, as well as the laws of Jackson County and the state of Missouri. . . .

Paragraph c: Licensee covenants and agrees to operate said "Dairy Queen" store, outlet, or unit at said location upon the following terms and conditions:

1. To use as his mix and supplies, including cones, cups and containers, toppings, vanilla, coloring, flavor, and like supplies and materials, only such supplies and materials as meet the standard therefore established by Dairy Queen, Inc. of Kansas City and its other Licensees for units and outlets located in Kansas City and North Kansas City, Missouri, and any standard established, or which may hereafter be established by "Dairy Queen National Trade Association, Incorporated", and to refrain from the use of any ice cream mix or ice milk mix which does not conform to said specifications as they may from time to time be established by Dairy Queen National Trade Association, Incorporated. . . .

4. Install . . . the said machines in said outlet as soon as practicable and to keep said machinery in good operating condition through frequent periodic examination and inspections, to keep thoroughly cleaned, greased, repaired, and serviced at no expense to Licensor. . . .

32. Defendants' failure to maintain Defendants' Store and to conduct business in a manner which conforms to the standards established by ADQ constitutes a breach of Defendants' contractual obligations and agreements, including but not limited to those undertaken by Defendants in the Franchise Agreement.

33. These breaches of the Franchise Agreement constitute irreparable injury to the reputation and goodwill associated with the ADQ and the DAIRY QUEEN® Marks.

34. As a direct and proximate result of these breaches, ADQ has incurred substantial losses, fees, and expenses.

Prayer for Relief

WHEREFORE, Plaintiff ADQ prays that this Court:

- a. Issue a temporary restraining order and preliminarily and permanently enjoin Defendants, and all those acting in concert with both or either of them, from the unauthorized display or other public use of any of the DAIRY QUEEN® Marks in connection with the operation, marketing or promotion of restaurant services unless and until they come into compliance with ADQ's cleanliness and food safety standards;
- b. Award ADQ such other relief as this Court may deem just and proper.

Dated: August 30, 2011

Respectfully submitted,

By: /s/ Todd W. Ruskamp
Todd Ruskamp, Mo. #38625
SHOOK, HARDY, & BACON LLP
2555 Grand Boulevard
Kansas City MO 64108
Telephone: (816) 559-2319
truskamp@shb.com

Laura J. Hein
Jason J. Stover
Ashley Bennett Ewald
GRAY PLANT MOOTY
MOOTY & BENNETT, P.A.
500 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 632-3000
Facsimile: (612) 632-4444
laura.hein@gpmlaw.com
jason.stover@gpmlaw.com
ashley.ewald@gpmlaw.com

**ATTORNEYS FOR PLAINTIFF
AMERICAN DAIRY QUEEN CORPORATION**

GP:3029815