

Summary of Douglas Fisher Affidavit (sworn July 5, 2010)

Douglas Fisher is the principal of FHG International Inc., a food service and franchise management consulting firm retained by the Plaintiffs in this proposed class action.

In this proposed class action, the Plaintiffs allege that the Always Fresh conversion imposed upon franchisees by the Defendants resulted in a diversion of franchisee profit to the Defendants on the sale of donuts and other Always Fresh baked goods. The Plaintiffs also allege that the Lunch Menu pricing is unreasonably low such that only TDL profits from the Lunch Menu.

On the basis of the materials he has reviewed to date, as informed by his experience in these matters, Mr. Fisher testifies that:

- The raw product or food cost to the Plaintiffs of an unfinished donut tripled as a result of the Always Fresh conversion, from \$0.06 per donut to \$0.179 per donut, a 198.3% increase.
- This increased food cost was not offset by cost reductions in labour, waste or other operating expenses incurred by the Plaintiffs.
- The benefits of economies of scale that should have been created by centralized production at the new Maidstone plant in Brantford, Ontario should have allowed TDL to hold the cost of Always Fresh donuts and other baked goods to, or below, that of the former production method.
- Contrary to reasonable commercial practices, as of March 2001 TDL had entered into a joint venture agreement to build the Maidstone plant, but had not developed a detailed economic analysis at the store level on its franchisees.
- TDL's communications with its franchisees were also inconsistent with reasonable commercial practices that generally include clear, accurate and timely communications in order to keep franchisees fully informed. TDL's communications to franchisees as reviewed by Mr. Fisher as of the date he swore his affidavit were essentially promotional. Moreover, the financial numbers that TDL used to present the product line and project the ultimate savings to franchisees were based on information that was both inconsistent and, in some instances, wrong.
- Lunch Menu food costs to the Plaintiffs amounted to a range of 51.5% to 54.6% in 2008, when combined with the paper and other operating costs associated with preparing and selling the Lunch Menu, these food costs yield a negative contribution to the Plaintiffs' operating profits. This means that the Plaintiffs lose money on Lunch Menu sales while generating transparent payments (RRA) of 16.5% to 22% of these Lunch sales for TDL, plus non-transparent benefits such as mark-ups on the related products and equipment that franchisees must purchase from TDL.

- The Lunch program does not significantly increase sales of high profit margin items as contended by the Defendants; those few additional sales attributable to the purchase of Lunch Menu items do not offset the losses incurred by the Plaintiffs who are required by TDL to sell the Lunch Menu at unreasonably low retail prices.
- The impact of these changes (the Always Fresh conversion and low pricing of the Lunch Menu) was, and is, the elimination of profits to the Plaintiffs and proposed Class A and Class B Members, increasing their business risk.
- The conclusions set out above can be extrapolated to all members of the proposed Class A and Class B.