

LEGAL BRIEF

**JURY FINDS HOLE IN DUNKIN' DONUTS CASE
AGAINST PITTSBURGH FRANCHISEE**

In what Dunkin' Donuts' Assistant General Counsel described before the start of the trial as its banner case in its loss prevention efforts towards its franchisees, a Pittsburgh jury on June 17, 2002 returned a verdict in favor of a Dunkin' Donuts franchisee who was alleged to have underreported his gross sales to Dunkin' Donuts, Inc. and its subsidiary, Seventh Dunkin' Realty, Inc. Notably, the same jury of eight also found that Dunkin' Donuts, Inc. breached the franchise agreement by failing to adequately assist its franchisee in the operation of his shop.

In *Dunkin' Donuts, Inc. et al. v. Chris Romanias, et al.*, Case No. 00-1886, U. S. District Court for the Western District of Pennsylvania, Chris Romanias, a Dunkin' Donuts franchisee, along with his uncle, were alleged to have intentionally underreported their gross sales to Plaintiff Dunkin' Donuts, Inc. As part of a scheme to underreport gross sales intentionally, Dunkin' Donuts, Inc. alleged, among other things, that Mr. Romanias failed to ring sales into the register properly, failed to prepare and maintain financial documents required under the terms of the franchise agreement, failed to report numerous wholesale accounts, and misrepresented the gross sales of his restaurants on weekly fee cards submitted to Dunkin' Donuts, Inc. In addition to claims for breach of contract, Dunkin' Donuts, Inc. sought punitive damages against Mr. Romanias and the other Defendants for fraud, and also sought to regain possession of Mr. Romanias' Dunkin' Donuts shop. In defense of these claims, Mr. Romanias alleged that Dunkin' Donuts, Inc. breached the franchise agreement by failing to adequately assist him in the operation of his shop.

In support of these claims, Dunkin' Donuts, Inc. relied in part on the findings of CIS Investigative Services, an outside private investigation firm routinely retained by Dunkin' Donuts, Inc. to uncover evidence of underreporting. The investigation against Mr. Romanias resulted in several covert surveillance videos shown to the jury, purporting to show that Mr. Romanias intentionally underreported his gross sales. Dunkin' Donuts, Inc. also sought to rely on the findings of a Retail Sales Analysis (RSA), a cost accounting tool used by Dunkin' Donuts, Inc. to determine what it believes the gross sales of a Dunkin' Donuts shop should be for a three year period, after considering the amount of product purchased in a 13 week time period unilaterally chosen by Dunkin' Donuts, Inc.

The jury found no credibility in the testimony of the private investigator retained by Dunkin' Donuts, Inc., whose testimony contradicted various written documents and the testimony of Dunkin' Donuts own employees. The jury also found little or no credibility in the findings of the RSA, which--in addition to having been prepared by an employee of Dunkin' Donuts, Inc. who had absolutely no education in cost accounting -- failed to take into account numerous factors that have a significant effect on the business of each and every Dunkin' Donuts franchisee, including couponing, discounting, local throw-away rates, and free give-aways. Perhaps most damaging to Dunkin' Donuts, Inc. was the testimony of its own employees, who, besides contradicting each other, testified that they receive significant monetary bonuses based on the amount of revenue received by Dunkin' Donuts, Inc. through its loss prevention investigation cases. The same employees also testified that they were specifically instructed to avoid Mr. Romanias' shop during the pendency of the action, a fact readily admitted by Dunkin' Donuts, Inc.'s counsel at the time of closing.

Franchisees in this action were represented by Robert Zarco, Esq. and Robert F. Salkowski, Esq., of Zarco, Einhorn & Salkowski, P.A., a Miami, Florida law firm. Contact Messrs. Zarco and Salkowski by calling (305)374-5418 or via e-mail at Zarcolaw@Zarcolaw.com. ?