



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

April 27, 2012

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2012-12

William H. Minor, Esq.  
DLA Piper LLP (US)  
500 Eighth Street, NW  
Washington, D.C. 20004

Dear Mr. Minor:

We are responding to your advisory opinion request on behalf of Dunkin' Brands, Inc. ("Dunkin' Brands"), concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the ability of Dunkin' Brands' separate segregated fund to solicit contributions from its non-corporate franchisees/licensees, as well as from the executive and administrative personnel of Dunkin' Brands' corporate franchisees/licensees. The Commission concludes that Dunkin' Brands may solicit contributions from its non-corporate franchisees/licensees, as well as from the executive and administrative personnel of its corporate franchisees/licensees.

### **Background**

The facts presented in this advisory opinion are based on your letter received on February 15, 2012, and your email received on March 6, 2012.

Dunkin' Brands is a corporation that is a franchisor of two restaurants: Dunkin' Donuts and Baskin-Robbins. Nearly 100 percent of Dunkin' Brands restaurants are franchised units owned and operated by individual franchisees/licensees. Dunkin' Brands enters into contractual arrangements using three standardized franchise agreements: one for Dunkin' Donuts restaurants, one for Baskin-Robbins restaurants, and one for restaurants that combine the two franchised concepts. The franchise agreements require franchisees to follow systems devised by Dunkin' Donuts and Baskin-Robbins in the operation of their restaurants.

Dunkin' Brands, Inc. Political Action Committee ("Dunkin' PAC") is the separate segregated fund ("SSF") of Dunkin' Brands. Dunkin' PAC currently solicits and accepts contributions only from the executive and administrative personnel of Dunkin' Brands.

Dunkin' PAC also wishes to solicit and accept contributions from its non-corporate franchisees/licensees, as well as from the executive and administrative personnel of its corporate franchisees/licensees.

***Question Presented***

*May Dunkin' PAC solicit and accept contributions from Dunkin' Brands' non-corporate franchisees/licensees, as well as from the executive and administrative personnel of its corporate franchisees/licensee?*

***Legal Analysis and Conclusions***

Yes, Dunkin' PAC may solicit and accept contributions from Dunkin' Brands' non-corporate franchisees/licensees, as well as from the executive and administrative personnel of its corporate franchisees/licensees, because Dunkin' Brands and its franchisees/licensees are "affiliated" within the meaning of the Act and Commission regulations.

The Act prohibits corporations from making contributions in connection with Federal elections. 2 U.S.C. 441b(a). The definition of "contribution," however, does not include expenses paid by a corporation for "the establishment, administration, and solicitation of contributions to" the corporation's SSF. 2 U.S.C. 441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii). A corporation or its SSF may solicit contributions to the SSF from a restricted class of persons. 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR 114.5(g)(1). A corporation's restricted class consists of its executive and administrative personnel and stockholders, and the families of those persons. 11 CFR 114.5(g)(1), 114.1(j).

An SSF may also solicit contributions from the executive and administrative personnel of the corporation's "subsidiaries, branches, divisions, and affiliates and their families." 11 CFR 114.5(g)(1). The factors set forth at 11 CFR 100.5(g)(4) are used to determine whether an organization is an affiliate of a corporation. 11 CFR 114.5(g)(2). These factors include: (1) whether an organization has the authority or ability to direct or participate in the governance of another organization through provisions of constitutions, bylaws, contracts, or other rules, or through practices and procedures; (2) whether an organization has the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decisionmaking employees or members of another organization; and (3) whether an organization had an active or significant role in the formation of another organization. 11 CFR 100.5(g)(4)(ii)(B), (C), (I). *See* 11 CFR 110.3(a)(3)(ii).

In previous advisory opinions addressing affiliation of franchisees or licensees to the franchisor/licensor corporation, the Commission has found affiliation to exist on the basis of the corporation's control over business policies, practices, and procedures of an entity and the extent of the entity's contractual obligations to the corporation that is the franchisor or licensor. *See, e.g.,* Advisory Opinion 1992-07 (H&R Block); Advisory Opinion 1988-46 (Collins Foods); Advisory Opinion 1979-38 (Hardee's).

The materials submitted by you indicate significant continuing control and direction by Dunkin' Brands over its franchisees/licensees. Under all three franchise agreements, Dunkin' Brands allows the franchisee to use the relevant proprietary marks<sup>1</sup> only in a manner specified by Dunkin' Brands. Under all three agreements, the franchisee may not compete with Dunkin' Brands in the sale of products that are the same as, or substantially similar to, those sold by the Dunkin' Brands franchise.

Dunkin' Brands maintains the right to establish standards for their franchisees/licensees, including the location, physical characteristics and quality of operating systems of restaurants; products that are sold; qualifications of suppliers; and qualifications, organization and training of franchisees and their personnel. Dunkin' Brands has standards and specifications for a franchise's design, layout, construction, furnishings and equipment. A franchise may sell only approved products and must maintain a sufficient supply of all approved products to meet customer demands at all times. Dunkin' Brands controls all advertising, marketing, and promotions programs of its franchisees/licensees.

The control exercised by Dunkin' Brands over its franchisees/licensees is similar to that described in Advisory Opinion 1979-38 (Hardee's) and Advisory Opinion 1988-46 (Collins Food). Accordingly, the Commission concludes that Dunkin' Brands' franchisees and licensees are its "affiliates" within the meaning of the Act and Commission regulations. And, as a consequence, Dunkin' Brands or Dunkin' PAC may solicit voluntary contributions from its non-corporate franchisees/licensees, and from the executive and administrative personnel of its corporate franchisees/licensees. *See* Advisory Opinion 1988-46 (Collins Food).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law, including, but not limited to, statutes, regulations, advisory opinions, and case law.

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<sup>1</sup> Proprietary marks include trademarks, service marks, logos, emblems, trade dress, trade names, and other indicia of origin.

The cited advisory opinions are available on the Commission's website, [www.fec.gov](http://www.fec.gov), or directly from the Commission's Advisory Opinion searchable database at <http://www.fec.gov/searchao>.

On behalf of the Commission,

(signed)  
Caroline C. Hunter  
Chair