



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

A. G. Kawamura, Secretary

January 8, 2009

DMS Notice
QC – 09 – 1
Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: **Subway Restaurants**

Attached is a stipulated final judgment and permanent injunction involving recent litigation against Subway Restaurants for misrepresenting price on items offered to customers. The settlement includes \$75,000 in cost reimbursements, \$285,000 in penalties, and \$285,000 in restitution to consumers.

We are very pleased with the continued support and fine work of the Santa Cruz, Marin, and Sonoma County District Attorney's offices in negotiating this settlement.

Marin County should be sure to report these penalties in the County Monthly Report and all participating counties are reminded to report their cost recovery amounts on the appropriate line of the monthly report.

Sincerely,

Edmund E. Williams

Cc QC Special Investigators
Kevin Masuhara, Director, County/State Liaison
Marin County District Attorney
Santa Cruz County District Attorney
Sonoma County District Attorney

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**KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT**
By: D. Taylor, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

PEOPLE OF THE STATE OF CALIFORNIA,)	Case No. CIV 086219
)	
Plaintiff,)	FINAL JUDGMENT and
)	PERMANENT INJUNCTION
vs.)	
)	
DOCTOR'S ASSOCIATES INC., a)	
Florida Corporation, dba)	
SUBWAY RESTAURANTS and SUBWAY)	
FRANCHISEE ADVERTISING FUND TRUST,)	
a Connecticut Common Law Trust,)	
)	
Defendants.)	

Plaintiff, the People of the State of California ("the People"), appearing through its attorneys, Edward S. Berberian, District Attorney for the County of Marin, by Robert E. Nichols, Deputy District Attorney; Bob Lee, District Attorney for the County of Santa Cruz, by William Atkinson, Deputy District Attorney; Stephan R. Passalacqua, District Attorney for the County of Sonoma by Matthew T. Cheever, Deputy District Attorney; and Defendants DOCTOR'S ASSOCIATES INC., a Florida Corporation, (henceforth DAI), and SUBWAY FRANCHISEE ADVERTISING FUND TRUST, a Connecticut Common Law Trust (henceforth "SFAFT"), appearing through their attorney, Jeffrey M. Tanzer, Esquire; and,

1 The parties having stipulated to the entry of this Final
2 Judgment and Permanent Injunction Pursuant to Stipulation ("Final
3 Judgment") prior to the taking of any proof, and without trial or
4 adjudication of any issue of fact or law; and,

5 The Court, having reviewed the allegations of the complaint
6 and the averments in the stipulated Final Judgment, finds that the
7 parties hereto have stipulated and consented to the entry of this
8 Final Judgment;

9 NOW, THEREFORE, THE COURT ORDERS THAT:

10 **JURISDICTION**

11 1. This action is brought under California law, and this
12 Court has jurisdiction of the subject matter and the parties;

13 **APPLICABILITY**

14 2. This Final Judgment is applicable to DAI and SFAFT, their
15 officers, directors, representatives, successors, assignees, and
16 all persons, partnerships, and corporations, their employees and
17 other persons or entities acting under, by, through, on behalf of,
18 or in concert with any of them, with actual or constructive notice
19 of this Judgment. All of these defendants, persons and entities
20 shall hereinafter be referred to collectively as "Subway."

21 **INJUNCTION**

22 **PROHIBITION OF DECEPTIVE ADVERTISING**

23 3. Pursuant to Business and Professions Code §17203 and
24 17535 defendants SUBWAY, and each of them, are permanently enjoined
25 and restrained from doing, directly or indirectly, any of the
26 following acts or practices in California:

27 A. Making or causing to be made any false or misleading
28 statement to the public with respect to the price of items offered

1 for sale, as prohibited by Business and Professions Code §17500;

2 B. Making or causing to be made any advertising
3 statements to the public that are inconsistent with menu boards and
4 advertising materials provided by SFAFT and DAI to Subway
5 restaurants;

6 C. Making or causing to be made to the public any
7 offer, promotion, advertisement or statement offering a product or
8 combination of products for sale when such offer is inconsistent
9 with the technical ability of the Point of Sales ("POS") software
10 that is licensed to each franchisee by DAI such that a consumer
11 cannot be charged the lowest advertised, posted, marked or quoted
12 price, excluding taxes, for each product or combination of
13 products.

14 **SELF INSPECTION**

15 4. Pursuant to Business and Professions Code §17203 and
16 17535 DAI shall direct its "Development Agent" or a designated
17 representative of a DAI Development agent to:

18 A. Inspect each and every Subway franchise restaurant
19 in the State of California no less than once every six months for
20 the three year period following the entry of this judgment for the
21 following purposes:

22 1. To verify that prices charged by the franchise
23 restaurant on its POS system are in accordance with posted prices
24 advertised;

25 2. To verify that no advertisement or
26 representations contradicts or is in anyway inconsistent with the
27 offer set forth in the Subway menus;

28 3. To verify that no advertisement or

1 representation contradicts, limits, modifies, alters or is in
2 anyway inconsistent with Subway promotional advertising materials
3 posted by the franchisee. For purposes of this paragraph a
4 franchisee is not acting inconsistently with a Subway promotion if
5 she/he elects not to participate in the promotion and posts no
6 Subway advertising materials advertising concerning the promotion
7 at the franchise.

8 B. If the DAI Development Agent or designated
9 representative determines that the franchisee charged a price in
10 excess of the lowest advertised price; or otherwise engaged in any
11 form of deceptive pricing, the Development Agent or authorized
12 representative shall:

13 1. Counsel the franchisee to cease such practices
14 immediately and not to deceptively advertise or charge prices in
15 excess of the lowest advertised price in the future; and

16 2. Issue the franchisee a brief "Counseling
17 Report" detailing the practice that the Agent or representative
18 observed and the warning given.

19 C. If the DAI Development Agent or designated
20 representative determines that the same franchisee has on a
21 continuing or repeated basis engaged in deceptive advertising; or
22 failed to charge the lowest advertise price, the DAI Development
23 Agent or agent's representative shall advise DAI's counsel who
24 shall notify the local County Department of Weights and Measures of
25 the franchisee's ongoing conduct and provide copies of all
26 counseling reports.

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1 **TOLL-FREE CONSUMER COMPLAINT PHONE NUMBER**

2 5. Pursuant to Business and Professions Code §17203 and
3 17535 Subway shall:

4 A. Prominently display on a menu board or other Subway
5 promotional advertising materials required to be posted by each
6 Subway restaurant franchisee, a toll-free telephone number for
7 consumer price accuracy complaints.

8 B. DAI shall direct a DAI Development Agent or
9 authorized representative of a DAI Development Agent to investigate
10 each complaint.

11 C. If the DAI Development Agent or designated
12 representative determines that the franchisee has: changed, altered
13 or modified a Subway menu board or other Subway promotional
14 advertising materials in a false or misleading fashion; made a
15 representation to consumers that is contradicted, limited,
16 modified, altered or otherwise inconsistent with an offer set forth
17 in the Subway menu or other Subway promotional advertising
18 materials; charged prices in excess of the lowest advertised price,
19 or otherwise engaged in any form of deceptive pricing, the
20 Development Agent or authorized representative shall take the
21 actions set forth in paragraph 4 (B) and (C) above.

22 **MONETARY RELIEF**

23 6. SUBWAY shall pay the People as and for investigative
24 costs the sum of \$75,000.00 by one certified check made payable to
25 the "Marin County District Attorney." Said costs shall be
26 distributed to the agencies listed below in the following amounts:

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<u>Agency</u>	<u>Amount</u>
Contra Costa Dept of W & M	\$ 910.00
Cal. Division of Measurement Standards	\$ 2,840.56
Fresno Dept. of W & M	\$ 1,018.00
Los Angeles Dept. of W & M	\$ 521.00
Madera Dept. of W & M	\$ 170.10
Marin County Dept. of W & M	\$ 2,574.15
Marin District Attorney	\$ 19,000.00
Merced Dept. of W & M	\$ 2,303.53
Napa Dept of W & M	\$ 596.00
San Bernardino Dept of W & M	\$ 518.00
Santa Cruz County Dept. of W & M	\$ 2,390.00
Santa Cruz District Attorney	\$ 20,212.50
Sonoma County Dept. of W & M	\$ 2,444.16
Sonoma County District Attorney	\$ 19,000.00
Ventura Dept of W & M	502.00
Total Costs	\$75,000.00

RESTITUTION

7. Recognizing the infeasibility of identifying injured consumers who suffered actual loss, the impracticality of providing direct restitution to said consumers, and the disproportionate costs of making restitution to individual consumers, which would far exceed the benefit consumers would gain, the parties agree that Subway shall make restitution under the doctrine of *cy pres* pursuant to Business and Professions Code Sections 17203 and 17535 by distributing 142,500 Subway gift cards of a value of \$2.00 each directly to California consumers as follows:

A. DAI will advertise a gift card give away to consumers in newspaper advertisements throughout the State of California, on its website at www.subway.com, and through signs placed in all California Subway stores for a period of four (4) weeks;

B. Consumers may claim a gift card either by completing a web form accessed by a link from the subway.com website or by calling a toll-free telephone number both of which shall be

1 provided and maintained by DAI;

2 C. Gift Card Restitution will be limited to one card
3 per California address;

4 D. Gift Cards will be distributed on a first call first
5 distributed basis. DAI will handle all order fulfillments;

6 E. DAI will continue to distribute gift cards for six
7 (6) weeks following the initial advertisement or until the supply
8 of cards is exhausted, whichever comes first;

9 F. At the conclusion of the six (6) week gift card
10 distribution period, DAI shall notify the Marin County District
11 Attorney of:

12 1. The total number of gift cards distributed to
13 California Consumers; and,

14 2. The total monetary value of all remaining
15 undistributed gift cards, if any;

16 G. The monetary value of any remaining gift cards not
17 distributed to California consumers by DAI at the end of the six
18 week period shall be held by DAI and cumulated into a single
19 "Voucher" in the amount remaining and issued to the California
20 Chapter of the American Red Cross. The Voucher will permit the Red
21 Cross to contact DAI and request sandwiches for distribution in the
22 event of fires, floods, earthquakes or other disasters in
23 California up to the dollar value of the Voucher. DAI shall make
24 arrangements for the fulfillment of the request from area
25 restaurants. However, DAI may limit the number of sandwiches that
26 can be fulfilled at any one time due to available resources, (food,
27 staffing and available restaurants). The Voucher shall not have an
28 expiration date, but will expire upon exhaustion of the underlying

1 dollar value. DAI shall notify the Red Cross upon exhaustion of
2 the dollar value of the voucher.

3 CIVIL PENALTIES

4 8. SUBWAY is hereby ordered, pursuant to Business &
5 Professions Code §§17206 and 17536, to pay at the time of the
6 filing of this judgment, a civil penalty of \$285,000.00 by
7 certified check made payable to the "Marin County District
8 Attorney" Pursuant to Government Code Section 26506 said civil
9 penalty shall be divided equally and paid to the county of each of
10 the prosecuting agencies bringing this action.

11 PAYMENT METHOD

12 9. All checks required under the terms of this Final
13 Judgment shall be delivered to Robert E. Nichols, Marin County
14 District Attorney's Office, 3501 Civic Center Drive, Room 130,
15 San Rafael, California 94903, within five business days of the
16 entry of this Final Judgment.

17 RETENTION OF JURISDICTION

18 10. Jurisdiction is retained for the purpose of enabling any
19 party to this Final Judgment to apply to the Court at any time for
20 such further orders and directions as may be necessary and
21 appropriate for the construction or carrying out of this Final
22 Judgment, for the modification or termination of any of its
23 injunctive provisions, and for the enforcement of, compliance with,
24 and punishment of violations of this Final Judgment.

25 11. The clerk is ordered to immediately enter this Judgment.

26
27 Dated: DEC 19 2008

28 PAUL M. HAAKENSON
Judge of the Superior Court