

March 18, 2004

Honorable Michael Bloomberg
Mayor
City of New York
City Hall
New York, N.Y. 10007

Re: Snapple Beverage Corp.

Dear Mayor Bloomberg:

Pursuant to City Charter Section 328(c), I object to the registration of the agreement between the Department of Citywide Administrative Services (DCAS)/ New York City Marketing Corporation and Snapple Beverage Corp. ("Snapple"). I am filing this objection because the process by which Snapple was awarded the agreement was unacceptably compromised and corrupted by inappropriate involvement of Marketing Corporation officials in a related award to Snapple by the Department of Education. This involvement resulted in a preordained determination to select Snapple for the citywide vending and marketing opportunities. In addition, I am returning the agreement because of deficiencies in required certifications on compliance with procedural requirements and on DCAS/MDC's legal authority to enter into the agreement.

Department of Education Snapple Award

Attached is a copy of my office's audit of the Department of Education's process that led to the award of a \$40 million agreement with Snapple (the DOE Agreement). The audit found fundamental flaws in that process, resulting in a lack of fair and open competition. The audit also identified that Snapple's monetary offer to the DOE was substantially less than that offered by other beverage suppliers and that despite the low offer, the DOE continued negotiations solely with Snapple. Notwithstanding the gross deficiencies in the DOE process, NYC Marketing ("MDC") stated it selected Snapple for the \$126 million Citywide Agreement based solely on the DOE award.

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Improper discussions with certain suppliers regarding a Citywide Agreement

At a December 8, 2003 hearing before the City's Franchise and Concession Review Committee ("FCRC") to discuss the Citywide Agreement, the President of MDC, Joseph Perello, testified that there was no citywide marketing agreement envisioned prior to DOE's choosing Snapple for the DOE Agreement. Mr. Perello stated:

There was simply no citywide marketing opportunity for beverages **contemplated** at the time that the DOE competition was created **or prior to the DOE selection of Snapple.** (emphasis added).

Documents provided to my auditors demonstrate that that statement is simply not true. Contrary to Mr. Perello's December 8th testimony to the FCRC and the MDC memorandum to the FCRC, in an email dated August 21, 2003, five days prior to MDC's and Octagon's recommendation of Snapple to the DOE, Mr. Perello wrote Deputy Mayor Doctoroff:

Separately, we met with Adrian and Betsy at Parks today and they re-affirmed their desire to be part of **a larger City deal.** (emphasis added).

Attached to Mr. Perello's email to the Deputy Mayor, on August 21st a representative of Pepsi wrote to Mr. Perello:

Hope this correspondence finds you well and moving **your sponsorship initiative for the city along at an acceptable pace.** (emphasis added).

Pepsi also included an outline of its DOE proposal to Mr. Perello in its email. In commenting on Pepsi's statement on the citywide deal, on the same day Mr. Perello wrote the Deputy Mayor:

Bill's [Pepsi] comments clearly reflect their desire to do a larger deal. **We hear the same from Snapple.** (emphasis added).

Marty Oestreicher, Chief Executive, Office of School Support Services, who was in charge of the DOE process that resulted in the selection of Snapple, was copied on Mr. Perello's email to the Deputy Mayor. Therefore, Mr. Oestreicher was aware that discussions regarding a city-wide deal were taking place before Snapple was purportedly selected during a meeting Mr. Perello attended with Octagon on August 25, 2003. On August 22, 2003, while commenting on Mr. Perello's email to the Deputy Mayor, Mr. Oestreicher emailed DOE's marketing representative, David Bober of Octagon, stating:

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I'd like to hear from Snapple what they told Perello.

Mr. Perello informed my auditors that Snapple was told that it was awarded the DOE Agreement on August 27, 2003. Mr. Perello also informed my auditors that he met with Snapple on August 27th and on that single day not only helped renegotiate the DOE Agreement upwards, but also negotiated for the first time the terms of the \$126 million Citywide Agreement. Mr. Perello also stated that he obtained all required Mayoral approvals for the citywide deal one day in advance of his meeting with Snapple, i.e., August 26, 2003.

It is clear from the emails, however, that MDC had discussions with certain beverage suppliers regarding a Citywide agreement while at the same time discussing the DOE Agreement. As evidenced by the emails, it is also clear that the testimony, which the Mayoral representatives relied upon when casting their approval of the Citywide Agreement, was not true resulting in a further corruption of the process.

Octagon

The DOE's marketing agent for this contract was Octagon. As clearly demonstrated in prior letters to the DOE and the Administration, Octagon has potential conflict-of-interest issues in its selection of Snapple. Octagon represents Cadbury, which is owned by Snapple's parent company, Cadbury-Schweppes, which stands to benefit substantially through the sale of its products Citywide and in teacher lounges under the agreements. In addition, Deutsch, Inc. and Octagon are both owned by the Interpublic Group. Deutsch is Snapple's marketing and advertising firm. The MDC/Snapple agreement states that Snapple will implement at least \$60 million in marketing initiatives when advertising Snapple and the City. Deutsch and by extension Interpublic, the parent company of Octagon, will benefit greatly from conducting Snapple's marketing campaign.

The FCRC process

The predecessor to the FCRC was informally created in mid-1970 as a result of an audit by the Comptroller's Office that found large scale waste and mismanagement in City concessions, which previously had little to no oversight. The audit also noted that there were no systems, procedures or controls in effect, resulting in the loss of millions of tax dollars annually. The Comptroller's audit made over fifty recommendations, all of which were substantially agreed to by the Mayoralty. Subsequently, the 1989 Charter Commission considered the areas of concessions and franchises to be of such importance that it statutorily gave to the FCRC jurisdiction over both. (City Charter Chapter 14).

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Chapter 14 defines a concession as “a grant by an agency for the private use of City-owned property for which the City receives compensation. . . .” On November 21, 2003, Mr. Joseph Perello, the President of MDC, wrote to the FCRC in connection with the Citywide vending machine concession. In his memorandum, Mr. Perello stated:

The City’s brand is a **valuable property, just like a City Park or building**, and its worth can be enhanced or diminished by an association.
(emphasis added).

Notwithstanding Mr. Perello’s statement that the City’s brand is a valuable property, and the Charter’s definition of a concession as the use of City-property for compensation, the Resolution presented for FCRC approval was solely for the occupation of City property by Snapple vending machines. The MDC agreement with Snapple was not, according to the Law Department, subject to FCRC approval. Therefore, the Law Department appears to take the position that MDC can sell the City’s naming rights, for example to a certain brand of clothing or automobile without any public discussion or oversight by the FCRC.

The Comptroller’s Office believes that the Administration was required to submit the entire Citywide Agreement for FCRC review and approval, and that the Administration’s attempt to limit FCRC oversight is an unlawful preemption of the authority granted to the Comptroller and Borough Presidents under chapter 14 of the Charter. As a consequence, the Mayoral certification that the City’s required procedures for soliciting the Citywide Agreement were followed as well as the Law Department’s certification that the agency had the legal authority to award the contract are improper. Therefore, in addition to objecting to the registration of the contract pursuant to Charter Section 328(c), I am also rejecting the contract pursuant to Charter Section 328(b)(ii).

Very truly yours,



William C. Thompson, Jr.

Cc: Hon. Martha Hirst
Mr. Joseph Perello