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ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
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FILED

MAR 24 2010

Division of Consumer Affairs

By: Cathleen O'Donnell
Deputy Attorney General
(973) 648-4584

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

DELUXE GOURMET SPECIALTIES, LLC,

Respondent.

Administrative Action

CONSENT ORDER

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Bureau of Kosher Enforcement ("Division"), as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), and the Regulations Concerning the Sale of Food Represented as Kosher, N.J.A.C. 13:45A-21.1 et seq. ("Kosher Regulations"), have been or are being committed by Deluxe Gourmet Specialties, LLC, as well as its owners, officers, directors, managers, members, employees, representatives, agents, subsidiaries, successors and assigns (collectively, "Respondent" or "Deluxe") (hereinafter referred to as the "Investigation");

WHEREAS Respondent, a limited liability corporation with a main business address in the State of New Jersey ("State" or "New Jersey") of 85 Corona Court, Old Bridge, New Jersey 08857, is engaged in the business of offering for sale and selling various food products including Bea's Slammin' BBQ Sauce;

WHEREAS the Division alleges that Respondent included on the label of its Bea's Slammin' BBQ Sauce a kosher food symbol from the Orthodox Union ("OU") which represented that the product was endorsed by the OU as Kosher, when such was not the case;

WHEREAS the Respondent denies that it has committed any violations of the CFA and the Kosher Regulations; and

WHEREAS the Division and Respondent (collectively, the "Parties") having reached an amicable agreement resolving the issues in controversy and concluding this Investigation without the need for further action, and Respondent having voluntarily cooperated with the Investigation and consented to the entry of the within order ("Consent Order") without having admitted any fact or violation of law, and for good cause shown:

IT IS ORDERED and AGREED as follows:

1. EFFECTIVE DATE

1.1 This Consent Order is effective on the date that it is filed with the Division ("Effective Date").

2. DEFINITIONS

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 "Attorney General" shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.2 "Consumer" shall refer to any Person who is offered Merchandise for Sale.

2.3 "Deluxe Products" shall refer to all food products offered for Sale by Deluxe, Including Bea's Slammin' BBQ Sauce.

2.4 “Include” and “Including” shall be construed as broadly as possible and shall mean “without limitation.”

2.5 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c) and shall Include Deluxe Products.

2.6 “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.7 “Represent” shall mean to state or imply through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word “Represent” Including “Represented” and “Misrepresent.”

2.8 “Sale” shall be defined in accordance with N.J.S.A. 56:9-1(c).

3. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of its business in the State and shall comply with all rules and regulations as now constituted or as may hereafter be amended Including the CFA and the Kosher Regulations.

3.2 Respondent shall not Misrepresent on its Deluxe Product labels that the Merchandise is Kosher through the use of a recognized Kosher food symbol, Including, “OU,” when authorization to use the Kosher food symbol has not been obtained from the applicable Person.

3.3 Respondent shall not use on any Merchandise a recognized Kosher food symbol, Including, “OU,” without first obtaining written authorization from the Person Represented by that Kosher food symbol, pursuant to N.J.A.C. 13:45A-21.7(a)8.

3.4 Respondent shall not fail to respond in a timely fashion to an inquiry conducted by the Division, pursuant to N.J.A.C. 13:45A-21.7(a)16.

3.5 Respondent shall not fail to answer any question pertinent to an inquiry made by the Attorney General and/or Division pursuant to N.J.S.A. 56:8-3, unless the response is subject to a bona fide claim of privilege.

3.6 Respondent shall not fail to make a proper and timely response by way of appearance and/or production of documents to any subpoena issued on behalf of the Attorney General and/or Division pursuant to N.J.S.A. 56:8-3.

4. SETTLEMENT PAYMENT

4.1 Respondent agrees to pay the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) to the Division ("Settlement Payment"). The Settlement Payment shall be comprised of a civil penalty, pursuant to N.J.S.A. 56:8-13.

4.2 In accepting the Settlement Payment, the Division has agreed to forego reimbursement for its attorneys' fees and investigative costs to which it is entitled, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19.

4.3 Based upon Respondent's prior representations as to its financial status, the Division agrees to suspend a portion of the Settlement Payment subject to the conditions set forth in Sections 4.4 through 4.7.

4.4 Respondent shall pay a total of Seven Thousand Five Hundred and 00/100 Dollars to the Division in six (6) installments as follows:

- a. On or before the Effective Date, Respondent shall pay One Thousand Two Hundred Fifty and 00/100 Dollars (\$1,250.00); and
- b. The remaining Six Thousand Two Hundred Fifty and 00/100 Dollars shall be paid in equal installments of \$1,250.00 on or before the fifteenth of each of the five (5) months thereafter.

4.5 The payments referenced in Section 4.4 shall be made by certified or cashier's check or money order made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

Cathleen O'Donnell
Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

4.6 Upon making each installment of the Settlement Payment, Respondent shall immediately be fully divested of any interest in, or ownership of, the monies paid, and all interest in the monies, and any subsequent interest or income derived therefrom shall inure entirely to the benefit of the Division pursuant to the terms herein.

4.7 The suspended portion of the Settlement Payment shall be automatically vacated at the end of a one (1) year period from the Effective Date, provided:

- a. Respondent complies with the restraints and conditions set forth in this Consent Order;
- b. Respondent does not engage in any acts or practices in violation of the CFA and/or Kosher Regulations; and
- c. Respondent pays the sum of Seven Thousand Five Hundred and 00/100 Dollars in the manner required under Section 4.4.

4.8. In the event Respondent fails to comply with Section 4.7, the balance of the Settlement Payment shall be immediately due and payable upon written notice by the Division. In any such notice, the Division shall provide Respondent with the specific details of the alleged

noncompliance and Respondent shall be afforded a five (5) day period within which to cure any such noncompliance. In the event of Respondent's failure to cure any such noncompliance, the Division will file a Certificate of Debt for the balance of the Settlement Payment.

5. GENERAL PROVISIONS

5.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

5.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

5.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

5.4 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

5.5 Except as otherwise explicitly provided in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

5.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

5.7 This Consent Order shall be binding upon Respondent as well as its owners, principals, officers, directors, agents, employees, successors and assigns, and any Person through which it may

now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

5.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order avoid compliance with this Consent Order.

5.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall be construed as: (a) an approval, sanction or authorization by the Division or any other governmental unit of the State of any act or practice of Respondent; or (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA and/or the Kosher Regulations. Neither the existence of, nor the terms of this Consent Order shall be deemed to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 6) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.10 This Consent Order is a public document subject to the New Jersey Open Public Records Act.

5.11 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

6. RELEASE

6.1 In consideration of the injunctive relief, Settlement Payment, undertakings, mutual promises and obligations provided for in this Consent Order, the Division hereby agrees to release Respondent from any and all civil claims or Consumer-related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondent for violations of the CFA and/or the Kosher Regulations arising out of the Investigation, as well as the matters specifically addressed in this Consent Order (the "Released Claims").

6.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

7. PENALTIES FOR FAILURE TO COMPLY

7.1 The Attorney General (or designated representative) shall have the authority to enforce the injunctive provisions of this Consent Order or to seek sanctions for violations hereof or both.

7.2 The Parties agree that any future violations of the injunctive provisions of this Consent Order, the CFA and/or the Kosher Regulations shall constitute a second or succeeding violation under N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties.

8. COMPLIANCE WITH ALL LAWS

8.1 Except as provided in this Consent Order, no provision herein shall be construed as:

- a. Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- b. Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be

amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

9. NOTICES UNDER THIS CONSENT ORDER

9.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Cathleen O'Donnell
Deputy Attorney General
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

For the Respondent:

Betty F. Greitzer, Esq.
17 Village Green Way
Hazlet, New Jersey 07730

IT IS ON THE 24th DAY OF March, 2010 SO ORDERED.

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: 
SHARON M. JOYCE, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

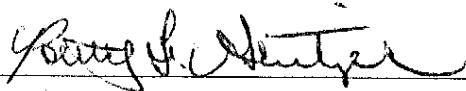
By: 

Dated: March 23,
2010

Cathleen O'Donnell
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 648-4584

FOR THE RESPONDENT:

BETTY F. GREITZER, ESQ.

By: 

Dated: March 19,
2010

Betty F. Greitzer, Esq.
17 Village Green Way
Hazlet, New Jersey 07730
(732) 888-9080

DELUXE GOURMET SPECIALTIES, LLC

By: Beatrissa Namm

Dated: 3/19/10,
2010

Beatrissa Namm, Owner
Deluxe Gourmet Specialties, LLC
85 Corona Court
Old Bridge, New Jersey 08857