



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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For Immediate Release

**APPELLATE COURT UPHOLDS DISMISSAL
OF COMPTROLLER'S CHALLENGE TO
NEW YORK CITY / SNAPPLE BEVERAGE CORP. VENDING AGREEMENT**

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New York, June 21, 2005 – An intermediate appellate court today unanimously (5-0) ruled in favor of the Mayor; the Marketing Development Corporation (MDC), more commonly known as NYC Marketing; and the Department of Citywide Administrative Services (DCAS) in the Snapple contact matter. Thus, the City's concession agreement with Snapple has triumphed again over efforts by Comptroller William C. Thompson to challenge the agreement.

Today's ruling upholds a lower court decision from July 2004 by the Supreme Court of New York County in July 2004 that also supported the City's position.

The concession grants Snapple the right to be the exclusive vending machine vendor of iced teas, chocolate drink and water in City-owned and -controlled facilities, and is expected to provide cash and other benefits to the City aggregating of millions of dollars over its five-year term. Today's ruling was based on the Court's finding that the objections to the agreement asserted in court by the Comptroller had been waived by his failure to assert them in his original letter purporting to reject the agreement's registration. In addition, the Court held that the Comptroller could not "look beyond the certifications of the Mayor and the Law Department." All told, the Appellate Court's ruling allows the Snapple contract to proceed. The Court also said that use of the City's intellectual property may in future cases need to be reviewed by the City's Franchise and Concession Review Committee (FCRC).

"We are very pleased that the Appellate Division reached the same findings as the lower court. New York City Marketing has made extensive efforts to enhance the City's revenues through innovative partnerships such as the Snapple arrangement. We feel today's ruling affirms the Mayor's and the City's efforts to pursue such strategic alliances," said Corporation Counsel Michael A. Cardozo. He also added, "We disagree, however, with the Court's opinion that intellectual property such as efforts to market the City's image constitute a 'concession,' like a restaurant in a park. We plan to seek review of that part of the ruling by the state's highest court, the Court of Appeals in Albany, in an effort to keep the review process streamlined."

"We are pleased that the Court upheld the Snapple agreement, and we are committed to continuing our efforts to bring value to the City through innovative public/private partnerships," said Joseph Perello, NYC's Chief Marketing Officer and President of the Marketing Development Corp. "Our efforts require speed and agility to be competitive in the commercial marketplace which is why we will appeal the intellectual property point."

New York City Law Department Appeals Senior Counsel Dona Morris handled the case for the City, with assistance from Deputy Chief Frank Caputo. Lower court proceedings were handled by Jonathan S. Becker and Warren Shaw in the Law Department's Commercial & Real Estate Litigation Division; Daniel

Muller (now retired) and Howard Friedman of the Contracts Division; Spencer Fisher of the Legal Counsel Division; and New York City Marketing's General Counsel Bryan Grimaldi. Other Law Department divisions, including Economic Development, and other City agencies, including the Department of Education, also worked on the matter at various times.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 90,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

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