



E-Commerce

- Business
 - Boardroom
 - Critical Issues
 - Governance & Compliance
 - Green Business
 - Deals
 - Tech Law
 - Wall Street
- Communications
 - Cable & Satellite
 - Multimedia
 - Film
 - Gaming
 - Music
 - Publishing
 - Television
 - Wireless
- E-Commerce
 - Analytics
 - App Stores
 - E-Marketing
 - Online Advertising
 - Social Media Marketing
 - M-Commerce
 - Mobile Advertising
 - Net Neutrality
 - Piracy
 - Retail Transaction Indices
 - Search
 - Spam
- Enterprise IT
 - Hardware
 - Software

- [Cloud Computing](#)
 - [Virtualization](#)
- [Hot Topics](#)
 - [Controversies](#)
 - [Opinions](#)
 - [Trailblazers](#)
 - [Trends](#)
- [Security](#)
 - [ID Security](#)
 - [Internet Fraud](#)
 - [Malware](#)
 - [Privacy](#)
- [SMB](#)
 - [Expert Advice](#)
 - [How To](#)
 - [Startups to Watch](#)
- Reader Services
 - [Account Management](#)
 - [Become an Affiliate](#)
 - [Discussion](#)
 - [News Alerts](#)
 - [Newsletters](#)
 - [RSS / XML](#) [Headline Feeds](#)
 - Site Maps
 - [ECT News Network Map](#)
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 - [E-Commerce Times Site Map](#)
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October 21, 2011 12:10:55 PM

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Roasting in California: Dunkin' Donuts Coffee Fans Can't Order Online



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By Vivian Wagner
E-Commerce Times
10/21/11 5:00 AM PT

It's become something of a crisis for California consumers: Why can't they order Dunkin' Donuts coffee online? The answer lies in Prop 65, and the long and tangled history of a little chemical: Acrylamide is on the list of more than 800 chemicals that California's Proposition 65 requires companies to either remove from their products or warn consumers about.

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When consumers in California visit the [Dunkin' Donuts](#) website hoping to order a bag of their favorite java, they are met with the following message: "Important Notice: We are temporarily suspending the shipment of orders to California while we work to comply with Proposition 65 with the State of California. We apologize for any inconvenience."

Bloggers, commenters, and reviewers have been lighting up the Web with their frustration. "I can't even get my coffee jolt anymore, thanks to Prop 65," one commenter wrote [on DSLReports.com](#). "So, California, instead of getting your morning started with a cup of hot coffee, enjoy your tofu colada," groused blogger [JammieWearingFool](#).

A vertical banner advertisement for Avaya. The top half has a red background with white text. The bottom half has a white background with dark red text. The text in the red section reads: "right people + right information + real time = better business results". Below this is the Avaya logo, which consists of the word "AVAYA" in a stylized font and the tagline "The Power of We™" underneath. The text in the white section reads: "Click Here" in a large, bold font, followed by "to improve your business" in a smaller font.

right people +
right information +
real time =
**better business
results**

AVAYA
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What's Going On?

Dunkin' Donuts isn't doing much to explain the situation. When contacted by the E-Commerce Times, McCall Gosselin, public relations manager for Dunkin' Brands, only reiterated the statement on the website and directed any further questions to the [National Coffee Association](#).

"We apologize for any inconvenience this has caused our guests," she added.

The National Coffee Association did shed some light on the issue, however. It all goes back to the 2002 discovery by Swedish scientists that acrylamide, a chemical that in large

doses has been shown to cause cancer in mice and neurological damage to humans, is present in coffee -- as well as in many other products, including baked goods and French fries, explained Joseph DeRupo, a spokesperson for the association.

Acrylamide forms as a heat-induced reaction between the amino acid asparagine and sugars when some plant products are roasted, fried or baked.

"Acrylamide occurs naturally in the roasting of coffee," DeRupo explained to the E-Commerce Times. "It's in all coffee. It's nothing that's added -- it's completely naturally occurring. It's been in foods since people started cooking with fire."

Acrylamide, it turns out, is on the list of more than 800 chemicals that California's 1986 law, the Safe Drinking Water and Toxic Enforcement Act, otherwise known as "Proposition 65," requires companies to either remove from their products or warn consumers about.

If consumers or organizations find a chemical on the list in a company's products, they can file a 60-day notice with the California attorney general's office, and at the end of that period a suit can be filed. If a company does not remove the chemical or place a consumer warning, it can face steep fines. Many companies choose to settle these cases before they ever go to court.

"It's become kind of a cottage industry in California to bring lawsuits against companies that have products that have these chemicals," said DeRupo.

Even minimal amounts of a toxic chemical -- far lower than those that studies show cause cancer or reproductive harm -- can trigger Prop 65 notices and suits.

"The law empowers private litigants to enforce its terms without having to show that any consumer has been exposed to any material or substantial risk, let alone harmed," Walter Olson, a senior fellow at the [Cato Institute](#), told the E-Commerce Times. "As a result, entrepreneurial law firms roam the state identifying new, often far-fetched, unwarned-of risks and extracting cash settlements along with promises to warn from hapless defendants."

One effect of the law has been to make consumers oblivious to the warnings, Melissa Jones, an attorney with [Stoel Rives](#) who specializes in Prop 65 defense suits, told the E-Commerce Times.

"[Prop 65] had good intentions, but you have consumers being overwarned, and then they disregard the warnings," she explained. "In theory, the law sounds really great, but the way it's been interpreted makes it very difficult for businesses."

Responding to Prop 65

Dunkin' Donuts, along with more than 40 other coffee companies, including [Starbucks](#) (Nasdaq: SBUX), [was slapped with a lawsuit](#) earlier this year by the [Council for Education and Research on Toxics](#). It's one of several organizations that successfully sued fast food companies in California several years ago over the presence of acrylamide in French fries.

Starbucks' response has been to post "Proposition 65 Warning" signs in its California stores notifying customers that "chemicals known to the State of California to cause cancer and reproductive toxicity, including acrylamide, are present in coffee, baked goods, and other foods or beverages sold here."

Dunkin' Donuts' response, apparently, has been to temporarily suspend shipments to California while working out how to comply with the law. That compliance might include a putting a warning label on its coffee or attempting to remove the acrylamide. Neither option, according to DeRupo, is desirable for any coffee company.

"Can you imagine the effect a warning label would have on consumers?" DeRupo asked.

And taking it out is impossible, since roasting coffee beans is what gives them their distinctive flavor.

"If you try to take it out, it yields a product that's unpalatable," said DeRupo. "Many methods have been tried, but there's nothing that yields a palatable result."

Acrylamide: Friend or Foe?

It's not as though everyone thinks that acrylamide is perfectly healthy. Some nutritional researchers think that it would be best to reduce or eliminate it from our diets.

"While data on human risk is mixed, I'm not so sure we've settled the issue," cautions nutritionist and wellness expert [Sara Gottfried](#), M.D., in an [article](#) on her site.

"Even the erstwhile conservative [National Institutes of Health](#) states it is 'reasonably anticipated' that acrylamide is a human carcinogen. And the Environmental Protection Agency considers acrylamide, which does cause cancer in test animals, a probable human carcinogen," Gottfried notes.

In fact, the EPA and FDA both have done testing on acrylamide and determined that in large doses, it indeed poses health risks. The key here, however, is in the *amount* that it takes to cause harm; the amount in studies of the chemical is much larger than the average consumer would digest by drinking coffee or eating toast.

As a result, the FDA does not recommend that consumers avoid foods with naturally occurring acrylamide, saying on an [acrylamide question-and-answer page](#) on its site that "all these foods are part of a regular diet."

Its advice to consumers? It recommends that "consumers adopt a healthy eating plan, consistent with the Dietary Guidelines for Americans, that emphasizes fruits, vegetables, whole grains, and fat-free and low-fat milk and milk products; includes lean meats, poultry, fish, beans, eggs, and nuts; and is low in saturated fats, trans fats, cholesterol, salt (sodium) and added sugars."

So, consumers who want to order Dunkin' Donuts coffee online will just have to wait to see how the company decides it can best comply with Prop 65. In the meantime, the grocery store version of Dunkin' Donuts coffee, which is manufactured and distributed by [The J.M. Smucker Company](#), is available in supermarkets throughout the state, including Lucky, [Albertson's](#) (NYSE: ABS) and others.

It's likely that coffee won't be the last Prop 65 target.

"[Coffee] has been singled out, but so were French fries and potato chips," said DeRupo. "I wonder what's next." [ECT](#)

Freelance writer **Vivian Wagner** has wide-ranging interests, from technology and business to music and motorcycles. She writes features regularly for ECT News Network, and her work has also appeared in *American Profile*, *Bluegrass Unlimited*, and many other publications. For more about her, visit her [website](#).