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Franchise & Distribution

FRANCHISEE ACTIONS

Quizno's Accused of Defrauding Franchisees To Build Brand

Westerfield et al. v. Quizno's Franchise Co. et al., No. 1:06-cv-01210-WCG, complaint filed (E.D. Wis., Green Bay Div. Nov. 20, 2006).

Franchisees of Quizno's have filed a class-action lawsuit alleging that the sandwich chain is systematically defrauding its franchisees by misrepresenting its franchise contract and forcing them to buy goods and services at inflated prices.

The franchisees say the company's actions make it nearly impossible for them to turn a profit and stay in business.

The class action, brought by Wisconsin franchisees, says the allegedly illegal scheme consists of two parts. First, Quizno's uses fraud and deception to induce people to purchase franchises by misrepresenting the franchise contract and prospects for success, the complaint says.

Specifically, Quizno's allegedly saturates geographic areas with too many shops and sells franchises in arbitrarily defined "trade areas" that are unable to support a single Quizno's store.

The franchisees also say Quizno's uses the franchise system to force them to buy unneeded goods and services, as well as excessive amounts of necessary goods and services. Further, the franchisees must buy food and supplies from Quizno's at inflated prices, the suit says.

The complaint alleges that the franchisees must accept Quizno's coupons for free food or steep discounts from customers without receiving reimbursement. They also must pay an advertising fee, which the company "uses for self-serving purposes," the suit says.

As a result of these tactics, the Quizno's franchises inevitably fail, the plaintiffs say. After a store goes out of business, Quizno's allegedly threatens to sue to enforce the provisions of the 15-year-term franchise agreements.

Ultimately the company accepts a waiver of rights from the franchisee that bars the franchisee from seeking redress against Quizno's, the lawsuit says.

Moreover, the plaintiffs say, Quizno's moves new franchisees into the now-vacant locations and profits by taking advantage of lower business-entry costs.

"Then, having secured the store in the hands of a new and unwitting franchisee, Quizno's extracts the same monies from the new owner — actions geared to continue the illegal scheme of increasing revenues on the backs of those with no control," the complaint says.

The franchisees assert causes of action for violations of the federal Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1962(c), and the Sherman Act, 15 U.S.C. § 1.

Quizno's also violated the Wisconsin Antitrust Act, Wis. Stat. § 133; the state Fair Dealership Law, Wis. Stat. § 135; and the Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100.18 *et seq.*, the complaint says.

The plaintiffs also accuse Quizno's of common-law fraud and breach of contract under state law.

The franchisees are seeking declaratory and injunctive relief, as well as unspecified damages.

The class action was filed by Mark M. Leitner and Joseph S. Goode of Whyte Hirschboeck Dudek S.C. in Milwaukee and Justin M. Klein of Marks & Klein in Red Bank, N.J.

FRANCHISEE ACTIONS

Fed. Judge's Denial of Certification Doesn't Cover State-Court Case

In re Ford Motor Co., Nos. 05-14254, 05-14543 and 05-15152, 2006 WL 3542834 (11th Cir. Dec. 11, 2006).

The 11th Circuit has ruled that a federal court's denial of class certification in a case in which five car dealership franchisees sued Ford Motor Co. for breach of contract related to the company's wholesale truck pricing was not binding on a state-court plaintiff.

The ruling allows the dealers to move forward with their claims against Ford in an Ohio state court.

Initially, the case was brought as a class-action lawsuit in the U.S. District Court for the Northern District of Georgia. Five Ford dealers sued the auto giant for breach of their franchise agreements, as well as violations of federal law.

The lawsuit involved a wholesale truck pricing system that Ford adopted in the early 1980s. The dealers alleged that Ford dramatically increased its wholesale prices for medium-sized and heavy trucks to a level that prevented them from selling the vehicles on the retail market.