

Restaurant Brands International: Tim Hortons U.S. Franchisee Association Action for Declaratory Judgment Raises Similar Allegations to Those in Quiznos Class Action, Which Resulted in \$206 Million Settlement

Litigation Update

Earlier today, the Great White North Franchisee Association-U.S. (the Association), which is comprised of approximately 50% of all Tim Hortons U.S. franchisees, filed a [lawsuit](#) against Restaurant Brands International (QSR), making some of the same allegations that were raised in a class action lawsuit brought by Quiznos franchisees that resulted in a [\\$206 million](#) settlement.

Among other things, the Association's complaint alleges that Restaurant Brands International embarked on a strategy known as "franchisee income and equity stripping." The complaint alleges that the "stripping" occurred through "increased improper franchise fees," and a "right of first refusal" that requires franchisees to offer their store or stores to Tim Hortons for only the depreciated value of the furniture, fixture, and equipment.

The complaint seeks declaratory judgment for breach of the franchise agreement, implied covenant of good faith and fair dealing, and for violations of the Florida Deceptive and Unfair Trade Practices Act. A declaratory judgment, according to lead attorney Jerry Marks who represents the Association, is a decision from the court that what the plaintiff is alleging is true. If the plaintiff prevails, its members can file additional suits seeking monetary damages, Marks said.

Marks also represented the Quiznos franchisees whose \$206 million settlement was upheld in [2010](#). *The Capitol Forum* previously [interviewed](#) Marks about the similarities in allegations raised by Tim Hortons franchisees and the allegations in the Quiznos suit.

In a press release issued by the Association and Great White North Franchisee Association, Marks said the Association suit "mirrors the Quiznos case in many ways." "We see many of the same egregious practices taking place in the Tim Hortons case, and we are confident we can move forward quickly in bringing this to a positive conclusion for these Tim Hortons franchisees," he added.

Restaurant Brands International did not immediately respond to request for comment.

Unreasonable markups. The claims for breaches of the franchise agreement and implied covenant of good faith and fair dealing relate to whether Tim Hortons breached the representation in the Franchise Disclosure Document that it would only charge "reasonable" mark ups on required purchases and whether it charged "unreasonable mark-ups" on required purchases.

The issue of unreasonable mark-ups also raises questions about whether Tim Hortons “failed to properly and fully advise Plaintiff’s franchisee members as to the full extent of their costs and the royalties they would pay.” In our interview with Marks in January, Marks stated that an unreasonable mark-up on required purchases could constitute an undisclosed royalty.

An undisclosed royalty, price increases on required purchases, and violations of the implied covenant of good faith and fair dealing were all present in the Quiznos suit.

The plaintiff also alleges that the defendants have violated the Florida Deceptive and Unfair Trade Practices Act by failing to limit them themselves to “reasonable” profits on required purchases as they represented they would to franchisees.

To demonstrate unreasonable mark-ups, the Association uses comparisons to the prices Wendy’s franchisees pay for similar items. For example, according to the complaint, Tim Hortons charges franchisees \$104.08 per case more for Applewood bacon than Wendy’s, and Wendy’s franchisees pay \$23.85 less for boxes of diet and regular Coke than Tim Hortons franchisees.

Right of first refusal. The Association alleges that the defendants breached the franchise agreement and covenant of good faith and fair dealing by imposing the “unreasonable” right of first refusal on franchisees when they seek to transfer their stores.

This depreciated basis right of first refusal is, according to the complaint, “nothing more, nor less, than a forced forfeiture of franchisee equity and the blatant theft of the good will value of the business which the franchisee worked many years to establish.”

Quiznos response could provide insight into Restaurant Brands International’s defense. The Quiznos plaintiffs initially filed four separate class action suits that were consolidated into a single action. Quiznos denied the claims made in the lawsuits and the litigation played out over a period of four years, according to an [article](#) about the settlement.

In the case filed in Green Bay, Wisconsin, Quiznos argued in its [motion to dismiss](#) that the amended complaint merely described the terms of a contractual relationship and failed to state any “legally valid claims for relief.”

The Quiznos defendants essentially argued that all of the issues about which the plaintiffs were complaining were fully disclosed to the plaintiffs: “Plaintiffs ignore the full disclosures they received, the inherent risks they acknowledged, agreed, understood and assumed when they signed the Franchise Agreement and, most importantly, the terms of their Franchise Agreements.”

The judge in the Green Bay matter does not appear to have ruled on the motion to dismiss and the case was dismissed upon approval of the settlement.

Restaurant Brands International could similarly point to materials provided to the franchisees to argue that everything was adequately disclosed to the plaintiffs and the plaintiffs were aware of the risks associated with becoming a Tim Hortons franchisee.