U.S. Tim Hortons Franchisees Sue RBI Over Supply Costs

BETH EWEN

The Great White North Franchisee Association-USA is suing Tim Hortons USA and parent company RBI, alleging an “illegal and fraudulent business scheme”that aims to “convert the Tim Hortons franchise supply system into a supply chain business disguised as a franchise system.”

RBI, through Tim Hortons and its “web of affiliates, uses its exclusive control over the franchise system to…force franchisees to purchase needed goods at a cost far greater than market value,”the lawsuit claims.

“It’s the story of how to take advantage of franchisees,”said Jerry Marks, Marks & Klein.

“It is in many respects similar to our suit against Quiznos nine or 10 years ago. It’s unfortunate when the revenue from a distribution activity exceeds the revenue from royalties, and the costs that are borne by the franchisees are excessive.”

For example, the lawsuit says, the association’s franchisee members are charged “in excess of $104.08 per case more for Applewood bacon than Wendy’s franchisees will pay for the identical product.”

The lawsuit claims “they also pay “$23.85 more for boxes of diet and regular Coke; $10.92 more for a case of …gloves; $11.92 more for a case of 9-inch plastic straws; and $9.53 more for a 50-count register thermo tape than Wendy’s franchisees.”

In the last quarter of 2019, RBI reported that Tim Hortons revenue through its supply chain to franchisees was $586 million, while franchise and property revenue was $286 million, the lawsuit said.

Marks is pressing the suit on behalf of the Great White North Franchisee-USA association in U.S. District Court in the Southern District of Florida. Marks said he does not know the number of members in the association; most of them are in the Northeast.

A request for comment to Restaurant Brands International was not immediately returned.

The publicly traded RBI, which also owns Burger King and Popeyes Louisiana Kitchen, reported for the last three years declining same-store sales for its Tim Hortons restaurants each quarter, including a 4.3 percent decline in same-store sales for the quarter ending December 31, 2019, the lawsuit said.

Despite using a “relatively skeleton staff with limited resources,”the lawsuit claims, “Tim Hortons has year after year been able to turn a hefty profit at the expense of their franchisees.”

In 2017, RBI's SEC form 10-K reported a $78.1 million sales increase in Tim Hortons restaurants driven by a $135.3 million increase in supply chain sale of products. "The increase, which benefits RBI and its shareholders, was 'partially offset by a $57.2 decrease in Tim Hortons'restaurant revenues,'which primarily hurts franchisees,"the lawsuit says.

From 2015 to 2017, Tim Hortons earned "approximately two to three times the amount of revenue from supply chain sales to franchisees as compared to franchise and property revenues,"the lawsuit says. "Specifically, in 2017, Tim Hortons earned $2.228 billion in revenue from its supply chain sales compared to $925.7 million in franchise and property revenues."

Marks said the case against Tim Hortons differs from the Quiznos cases, which resulted in a $950-million settlement in 2009 in a class-action lawsuit that covered 6,900 franchisees. "What Quiznos was doing to its franchisees was very similar, except as follows. Quiznos really didn't at first disclose that they owned a lot of the entities that our franchisees were required to purchase supplies from. We later found that out,"he said.

"In this suit, there is a specific representation that whatever we designate you buy from…that we will only charge you a 'reasonable'in quotes amount."

The issue of what's 'reasonable,' Marks said, "We leave that for the court to determine, and I can't believe that with some of the amounts of the overcharging, that it couldn't be anything but unreasonable."

The Tim Hortons U.S. franchisee association previously sued the parent company in 2018.