



Franchise Owners Go to Court

Independent franchisee associations are leading the charge for more fairness in the fast-food industry

By [Douglas MacMillan](#)

Bhupinder "Bob" Baber, like most new franchise owners, was a generally optimistic person when he first opened two Quiznos restaurants in Long Beach, Calif., in 1998 and 1999. Little by little, though, Baber's optimism faded into a grudging hostility toward the operators of the sandwich chain, whom he felt had misrepresented the franchise opportunity to induce him to buy and then abandoned him once he had.

After a costly and ultimately futile attempt to win a civil suit in court for what he claimed to be fraudulent representation, Baber created Quiznos Subs Franchise Assn., an advocacy group and support network for troubled Quiznos franchisees like him. Shortly thereafter, Baber received a notice from Quiznos effectively terminating his franchise contract, which the company claimed he violated by misusing its corporate name in his association. Months of ensuing litigation cost the already financially drained franchisee close to \$100,000, and the U.S. District Court of California ruled that the case be sent to arbitration.

On November 27, 2006, Baber entered a local Quiznos, talked briefly with the manager, then excused himself to the restroom, where he shot himself three times, inflicting wounds he died of later that night. On his person, Baber left a printed suicide note that contained a clear message directed at the media, at fellow franchisees, and at Quiznos.

"I have struggled hard and did the best I could," he wrote, "to create a voice for the franchisees in the system and to create a 'support system' for the franchisees, which does not exist, and to fight the injustices of this franchise system....Not to bring the system down, but to make it fair."

Class Action

Baber's story comes as no great surprise to many in the franchise industry who have seen such downward spirals before. "It's a tragic story, but one that's repeated often in many franchise chains," says Susan Kezios, president of the Chicago-based American Franchise Assn. (AFA), a national organization started in 1993 to represent the interests of franchise owners. "I frequently see people unable to leave a franchise with their finances or emotions intact. When you sign the franchise contract, you agree to at all times be compliant with the policies and procedures as they change."

Baber is one of several Quiznos franchisees who has taken issue with the franchisor's policies in court. On November 20, 2006, 26 Quiznos operators and members of Toasted Subs Franchisee

Assn. (TSFA), a group formed by Quiznos franchisees to address the chain's problems and voice potential solutions, filed a class-action lawsuit against the company.

Citing violations of federal and state antitrust laws, the Racketeer Influenced and Corrupt Organizations (RICO) Act, and the Wisconsin Fair Dealership Law, the franchisees claimed that Quiznos forced them to buy food products at inflated prices and omitted or misrepresented key facts about the company's operation to induce a franchise sale. Quiznos declined to comment both on these allegations and on its history of litigation with Baber, but says that the TSFA "does not represent the franchise community as a whole."

Organized Muscle

Most franchise systems, including Quiznos, have in place a franchise advisory council, an official body of elected franchisee representatives that has some input in the chain's operation. But in most cases, the voice of this council is, as the name suggests, merely advice, and the franchisor has no obligation to act on it.

Independent franchisee associations, on the other hand, offer franchisees an unfiltered source of information, a unified voice, and a crucial source of funding if and when their concerns are brought to trial. Such organizations are typically incorporated as nonprofits, and members pay small annual dues—Quiznos franchisees pay an annual \$50 per store, for example, to be a part of the TSFA.

"An individual franchisee is generally in a much weaker position, financially and contractually, to negotiate," says Bruce Napell, partner of Sebastopol (Calif.)-based Singler, Napell & Dillon, a law firm that represents franchisees and franchisee associations. "A franchisee organization has a lot more leverage. It's a much larger piece of the franchise system telling [the franchisor], 'We have problems with what you've been doing.'"

Opening a Dialogue

Over the past few years, the number of these associations has grown, and many have stepped into the national spotlight for bringing their corporate parents into the courtroom. Franchisees of A&W, Pizza Hut, KFC ([YUM](#)), Denny's ([DENN](#)), Sonic ([SONC](#)), Little Caesar's, Domino's ([DPZ](#)), 7-Eleven, Burger King ([BKC](#)), Hooters, McDonald's ([MCD](#)), Hardee's ([CKR](#)), TCBY, Quiznos, Subway, and Dairy Queen among others, each have their own active independent associations. The AFA, which regularly acts as a strategic-planning consultant for newly formed franchisee groups, says the demand for such consultations has at least doubled over the past 10 years.

Though most associations have failed to win substantial cases, some have succeeded in opening up a dialogue in the franchise community centered on leveling the playing field for franchisees.

Take this example. The North American Association of Subway Franchisees (NAASF) alleged that an April 1, 2006, franchise agreement issued by Doctor's Associates Inc. (DAI), Subway's parent company, threatened to compromise franchisee control over a \$400 million advertising fund. So the NAASF, an independent group representing about 67% of all Subway franchisees, along with the Subway Franchisee Advertising Fund Trust, filed lawsuits seeking to bar Subway from instituting these new terms. The groups claimed that if left intact, the agreement would give Subway the power

to redirect franchisee advertising contributions to a separate entity at any time. DAI declined to comment on the ongoing litigation.

Switching Sides

Jim Hansen, CEO of NAASF, believes that when they're functioning properly, independent franchisee associations are a progressive step not just for franchisees but also for the corporate franchisors. "DAI doesn't own any restaurants, so the feedback mechanism they have has got to be through us," he says.

The organization also has the potential to facilitate communication the other way, Hansen adds. "We as a franchise association can explain to our membership how a policy or procedure might be beneficial, where from the outside looking in, that might not seem to be the right decision."

Harris Cooper has seen the franchise industry from both sides of the table. Between 1970 and 1987, he served as president of International Dairy Queen, but shortly after stepping down, he became the executive director of the independent associations Dairy Queen Operators' Assn. and the Dairy Queen Operators' Cooperative (DQOA/DQOC), posts he holds to this day. During the time that he ran the corporation, he says, the franchisees were given an active voice in its operation, feedback that was critical to a huge period of expansion for the system. But in recent years, the company has been at odds with its franchisees, chiefly over the supply of products, and over the company's desire to convert a large number of stores to a new concept called DQ Grill 'n' Chill.

Concessions Won

"I still think franchising is the greatest concept in the world. But more concern has to be focused on the abuses between franchisors and franchisees," Cooper says. "If the franchisees have to deal with a franchisor that doesn't respect their rights, there has to be an association that has the strength to litigate or arbitrate, or whatever it takes. There are certain rights a franchisor needs to execute their role, but [those don't] necessarily include total dictatorship."

A lawsuit filed by DQOA/DQOC against International Dairy Queen last fall was dismissed without prejudice after the company agreed to a number of stipulated changes to its operations. However, the DQ Grill 'n' Chill concept remains a point of contention between the two parties. While Cooper says it has failed to prove itself as a profitable venture, particularly for mom-and-pop operators who could be forced into the upgrade, Chuck Chapman, chief operating officer of IDQ, maintains that the new store concept is still strictly voluntary and makes financial sense for any franchisee seeking to reinvest in their business.

Cooper says his résumé gives him no special bargaining chips at the negotiation table. On the contrary, he says, "I think they have a vendetta against me," since he has made the franchisee organization much more powerful in his tenure as its director.

Legislative Agenda

Indeed, IDQ sees its ex-president as a source of conflict in relations with its franchisees. When potential franchisees inquire with the company about Cooper, as they often do, IDQ red-flags him

as a competitor to the chain. "In addition to the DQOA, Mr. Cooper heads the Dairy Queen Operators' Cooperative (DQOC) which competes for business with the Unified Supply Chain, Inc. (USCI), a subsidiary of IDQ," a standard response to these inquiries reads. It continues, "As USCI has established a guaranteed lower margin program and involved franchisees in an advisory capacity (Unified Supply Chain Council), the market share of the DQOC has dropped. The lawsuits and attacks are nothing more than the DQOC trying to stay in business despite the success of the USCI bringing lower prices to the franchisees."

Some in the franchise industry see these case-by-case court battles as the only means to bring about fairer franchising. Others believe federal legislation protecting the rights of the franchisee is an obvious solution. The Small Business Franchise Act, first introduced in 1998 by Representatives Howard Coble (R-S.C.) and John Conyers Jr. (D-Mich.), and strongly endorsed by the AFA, failed to become law that year or when it was reintroduced in 1999.

"Currently, the only rules governing fairness are contracts that [the franchisor's] corporate attorney draws up. We have to address the systemic problems of franchising and level the playing field for franchisees," says AFA's Kezios. "Now is the time, with a new Congress, for legislation to be reintroduced."

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