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Burger King loses first round in fight against Miami franchisee

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Burger King lost the first round in its quest to shut down Miami franchisee Al Cabrera over his failure to install new cash registers in time to meet the fast-food chain's deadline.

U.S. Magistrate Judge Edwin G. Torres denied Burger King's efforts to obtain a temporary injunction against Cabrera that would have forced the closing of four Miami restaurants. He said there was not sufficient evidence that Burger King "properly terminated this franchise agreement,"

"Other than the alleged breach of the Franchise Agreement related to the untimely compliance with the new POS policy that has already been cured, it appears that Defendant's restaurants continue to operate properly with no harm whatsoever to the goodwill of the Burger King brand," Torres wrote last week.

Torres wants a trial to decide whether Cabrera violated the franchise agreement and is illegally using Burger King's trademarks. A key to the case's outcome will likely hinge on whether the cash register systems in Cabrera's restaurants were "obsolete."

The court agrees that Burger King can require its franchisees to make equipment changes, but within certain parameters of the existing franchise agreement. The final decision could have broad implications within Burger King's franchise system and beyond.

In today's rapidly "growing world of technology new creative inventions are uncovered on nearly daily basis," Torres wrote. "Each new invention, although it may be a clear improvement over the older version of the same product, does not necessarily make the older product 'obsolete.'"

But Torres left open the door for Burger King.

"If the Court determines that BKC's policy to update the POS systems on this timetable rendered the existing equipment obsolete, BKC will then be able to shut down Defendant's operations," Torres wrote.

Burger King attorney Michael Joblove of Genovese Joblove & Battista, said he was "not troubled" by Torres' decision, which he did not expect to affect the outcome of the case.

'TIMING ISSUE'

"It's a timing issue, not a substantive issue," Joblove said. "The only victory Mr. Cabrera received was more time. At this time he does not have to close his four restaurants."

Burger King was attempting to shut down Cabrera's restaurants because he failed to install the new cash registers as required by the deadline of Dec. 31, 2009 or after a warning that gave him until Feb. 12, 2010. Cabrera did end up installing the new system by April 2010.

If Burger King fails to prove that Cabrera's cash registers were obsolete, that could affect hundreds of other franchisees who were forced to install the new system.

“It is extremely unfortunate that Burger King has used iron-fisted tactics such as threatening termination of franchisees as a way of requiring them to prematurely invest tens of thousands of dollars on equipment to replace perfectly operating equipment,” said attorney Robert Zarco of Zarco Einhorn Salkowski & Brito, who represents Cabrera.

The company was originally attempting to shut down all 10 of Cabrera's restaurants. But in the course of the litigation, Burger King acknowledged that Cabrera's other six restaurants may have systems manufactured after Jan. 1, 2000, and therefore do not required to be replaced until Jan. 1, 2012.

NEW SYSTEM

Miami-based Burger King has claimed it needs the new cash register system to better monitor sales activity and target promotions to keep up with its competitors. Any Burger King franchisees with cash registers at least 10 years old had to be changed by Jan. 1, 2010 and phasing continues through to Jan. 1, 2014. “Burger King didn't mandate a new POS system because it wanted shiny new metal in its restaurants,” Joblove said. “There were operational reasons for requiring this.”

Zarco argues that the court's decision may have long-term implications for efforts by Burger King and other franchisors to shut down franchisees for trademark violations.

“This case sets new legal precedent,” Zarco said. “It will help restrain the franchisor in imposing draconian measures on the franchisees.”