

Law & Orders

Florida Bagels vs. Brooklyn Water Enterprises (formerly The Original Brooklyn Water Bagel Co.)

Jurisdiction: Florida Circuit Court—Palm Beach County.

Background: The company formerly known as the Original Brooklyn Water Bagel may have devised a system to “Brooklynize” water to replicate the same formula as the New York City water, which is famous for producing unique-to-that-area bagels, but there’s a question of whether it actually patented that process as it claimed in its franchise sales materials.

Brooklyn Water Bagel’s “14-stage water treatment process” was intended to be replicable at franchised locations. Florida Bagels, the parent company of two area developers who paid \$375,000 each for the rights, alleges it was duped into signing contracts with the franchise, due in large part to its “patented” process. The complaint alleges Brooklyn Water Bagels used a “false, misleading and fraudulent advertising campaign” designed to “lure in third-parties” and rapidly expand its franchise concept.

“One of the major allegations is the fact that these people have been pontificating about their water filtration system, and our investigation has revealed that this equipment is not patented yet,” says the plaintiff’s Lead Counsel Robert Zarco of Zarco, Einhorn, Salkowski & Brito in

Miami. “They are taking credit for patents that haven’t been approved.”

Our search of the United States Patent and Trademark Office revealed no patents under “Brooklyn,” “water” or “bagels.”

In early September, Zarco filed a complaint against the franchisor, and Robert Mayer, who represents Brooklyn Water Enterprises (which, changed its name in January 2011 from the Original Brooklyn Water Bagel Co.), filed a motion to dismiss. Mayer did not return Franchise Times’ requests for an interview.

Himanshu Patel, also an attorney with Zarco’s firm, says Brooklyn Water Bagels changed the wording on all written and posted (Facebook, Twitter, LinkedIn) marketing materials and information contained in its Franchise Disclosure Document. The original marketing materials, which said the filtration process was “patented,” were changed to read “proprietary” some time in fall 2010, Patel says.

“We’re investigating whether the patent was applied for,” Patel says. “They may have applied for it and been rejected, or they may have actually gone out and tried to get an opinion from a lawyer, who said it wasn’t, but they went ahead anyway.”

Whether or not the patent was applied for, Zarco says in his view—and that of the Federal Trade Commission—claiming it was constitutes fraud.

“There are FTC rules that require truthful, honest, disclosure,” Zarco says. “Why not just say patent pending? You’ve gotta be fair and

honest.”

Case status: Zarco says the case is in the discovery process, and he is sending out document requests and deposition notices. One of those deposition notices will be sent to Larry King, the former CNN talk show host who is a Brooklyn Water Bagel area developer for Southern California, and current spokesman for the brand.

King, who was quoted on the franchise’s website as saying he “was intrigued to hear about the technology behind Brooklynized water as many people thought it couldn’t be done,” should be deposed by Zarco some time in early- to mid-October.

Calli Baker’s Firehouse Bar & Grill vs. Firehouse Subs

Jurisdiction: Federal District Court—South Carolina.

Background: A court said that Firehouse Subs does not have the right to sue Scurmont LLC, which does business as Calli Baker’s Firehouse Bar & Grill in Myrtle Beach, South Carolina, for trademark violations because it has the word “Firehouse” in its name.

Firehouse Restaurant Group of Jacksonville, Florida is the franchisor of Firehouse Subs, Three Alarm Subs and Fireside Restaurant Company.

In the complaint filed March 2009,