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CNBC Shelves Cold Stone Story after Zarco Attacks

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SCOTTSDALE, AZ – CNBC unexpectedly pulled its documentary *Behind the Counter: The Untold Story of Franchising* after receiving a threatening letter from Kahala's newly retained counsel [Robert Zarco](#).



CNBC films a Cold Stone ice cream mix being made, source/CNBC

In an email bulletin sent out throughout the system on December 23, the franchisor executive team updated the Cold Stone Creamery franchise community on its strategy "to defend and protect" its brand against "inaccuracies" of the CNBC documentary, which the network has repeatedly aired since December 15. In addition to hiring Zarco, identified as "the leading franchise attorney in the country," to represent franchisees on Cold Stone's behalf, they also retained Snell and Wilmer as franchisor counsel.

The television documentary featured five franchise brands: Five Guys Burgers, Camp Bow Wow, Cold Stone Creamery, Dunkin' Brands and Proctor & Gamble. CNBC's Emmy Award winning correspondent Darren Rovell spent four months delving into franchising because as he said he was fascinated with brands and how they work. He stated, "Franchising gives the average Joe and Jane a chance to affiliate themselves with a brand for a price. And as people lost their jobs, I heard of more and more people who sought to become their own boss by buying into a franchise. Did this make sense? Was it worth it to buy a franchise?"

The program focused on the enormous success of some companies, as well as the dark side of franchising. Blue MauMau's founder/editor Don Sniegowski was featured in the television piece, giving insights into some of the issues in the franchise community.

Cold Stone's Refusal to Participate in Exposé

The Cold Stone [bulletin](#) (pdf) states, "Let us begin by letting you know we are pursuing an aggressive PR campaign, as well as a potential legal campaign to clarify our position and correct the inaccuracies presented in the CNBC piece." Parent company Kahala Corp. said it has remained in communication with CNBC's producers and general counsel since the original airing, and the network has responded by removing two of the inaccurate statements, one regarding the class action lawsuit and another on "hidden expenses."

Kahala also addresses why it did not participate in the television documentary when asked by reporter Rovell. "...Darren Rovell approached Kahala with a clear agenda and bias. From the questions posed, it was clear CNBC had already determined to paint a negative picture of Cold Stone." The executives state that "participation in an on-camera interview came with inherent risk that CNBC could leave out full or partial answers or alter context to support a negative, one-sided piece."

Though Kahala said it communicated with the show's senior producers and CNBC's general counsel to make sure the facts were presented accurately, "the tenor of the questions and interactions remained negative." The email bulletin further explained, "After much discussion and consideration, understanding

that CNBC had full editorial control and could choose to edit our words that could distort our intended communication, Kahala determined it was in the best interest of our brand and our franchisees not to engage with CNBC on the basis of the false allegations outlined in the reporter's questions."

Zarco Goes on Attack

On Christmas Eve, Zarco confirmed to Blue MauMau that Cold Stone approached him about representing its franchisees in the matter saying, "I will now be the face of Cold Stone, the one to speak on behalf of the franchisees to protect the brand." He said this is a unique twist in the franchisee/franchisor relationship, as the two groups have joined forces to handle a crisis. The franchisee attorney said Cold Stone was so impacted by the CNBC documentary they immediately wired him a retainer check on behalf of franchisees after he consented in helping to represent owners against the damaging report.

Two weeks prior to the CNBC program, Zarco said he had formed the new National Independent Association of Cold Stone Creamery Franchisees, Inc. (NIACSF), with 100 stores under its belt. "The newly formed group was not organized for the purpose of adversity or litigation, but to try to have the franchisor recognize their existence and be more receptive to their suggestions," Zarco said. Although there was no discussion of litigation in forming the independent association, he said, "That doesn't mean if it ever arose we wouldn't do it."

After viewing the CNBC documentary, Zarco said he discussed with the franchisees how Cold Stone should have not refused to participate in the television program to get their side of the story heard. Although the franchisor already had the National Advisory Board (NAB) in place, comprised of franchisees and company officials, Zarco will now represent both organizations. Zarco said Kahala probably recognized his media savvy as well as his ability to represent franchisees. Cold Stone has agreed to pay all of legal fees for the two associations' incurred by his law firm Zarco Einhorn Salkowski & Brito PA.

In a [strongly worded letter](#) (pdf) sent on Christmas Eve at 6 p.m. to David N. Sternlicht, CNBC's media counsel, Zarco scolded CNBC for acting "irresponsibly, wrongfully and with malicious intent, negligently, and with reckless disregard for the interests of the franchisor, the franchisor's employees, the franchisees' employees, and consumers." He said its report was based on numerous defamatory, false and misleading statements about Cold Stone Creamery's franchisor-franchisee relationship.

Zarco tore into the television network for making former franchisee Cecil Rolle the face of its purported expose'. "Rolle is neither indicative nor representative of the typical Cold Stone franchisee. He has, for years, demonstrated a vindictive and willful intent to harm, maliciously defame, and consistently interfere with Cold Stone, its franchisees, and the Cold Stone brand," the letter declared.

Zarco also took issue with CNBC falsely and misleadingly representing Rolle as an attorney from Florida. His letter states, "Rolle, in fact, is not a licensed attorney from Florida and is not a licensed attorney in any state. Undoubtedly, the sole purpose of this false representation was an attempt to legitimize Rolle's statements and bolster his and CNBC's credibility and authority with the public, including Cold Stone employees, franchisees, prospective franchisees, and the consuming public."

Other issues brought up by the Zarco letter were the statements made by Rolle accusing the franchisor of "kickbacks" from vendors and other "hidden" expenses. He stated, "This language is highly inflammatory and intended to imply illegal activity by the franchisor. In reality, however, the relevant franchise agreements disclose that the franchisor is entitled to collect reasonable financial incentives from vendors and suppliers, which amounts are frequently used for brand marketing activities." Zarco asserts that the fees collected are properly disclosed in the appropriate FTC-required disclosure document that prospective

franchisees receive prior to becoming actual franchisees. "As such, they are neither "hidden," improper, or illegal.

Zarco said he received a phone call from David Sternlicht, shortly after sending his letter. He said the CNBC media lawyer told him they would pull the piece temporarily, to further investigate the facts of its report. The show was due to run on December 24 at 7:00 p.m. EST and again last night, but they were preempted by another program.

Ramifications of Zarco's Role

In explaining his position in representing the franchisees of Cold Stone regarding the CNBC report, Zarco stressed that he set out the conditions at which he consented. He explained, "I'm speaking on behalf of the franchisees and the system, for the benefit of the franchisor as well. Cold Stone agreed that I would represent the National Advisory Board and the National Independent Association of Cold Stone Creamery Franchisees, Inc.

He said "I told Kahala and Cold Stone that they would have to sign a waiver of conflict of interest that they will never assert that my representation in this matter will constitute a conflict for me to represent franchisees and area developers in the future. They agreed." Zarco said that was the conditions in Kahala accepting my representation. "It was very important for them to understand I am not creating a conflict of interest and not representing the franchisor against the franchisees," he explained.

Zarco emphasized, "My representation of the franchisees of Cold Stone will be done in a way in which we align the interests between the franchisees and the franchisor, which will benefit both."

Zarco's law firm plans to file their complaint on Monday.

Telephone calls and emails to CNBC were not returned.

Read the columns of two attorneys facing off on the legal issues surrounding this story — the desire to stop media from "unfairly" demeaning a franchise brand, the protections of free speech, and the need to fully represent one party or the other.



Franchisee attorney Paul Steinberg writes on the protections of free speech, "**Point: Sue Me, Bob Zarco**"

To which franchisee attorney Bob Zarco replies, "**Counterpoint: You Are Wrong, Steinberg**"



CNBC Replies to New York Post on Cold Stone

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