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Franchisees say Dunkin's brewing trouble

The Boston Globe

Corporation accused of a campaign to fine or purge shop owners

By Jenn Abelson

Globe Staff / September 23, 2009

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Dunkin' Donuts franchisees, embroiled in more than 350 lawsuits with the coffee chain, are accusing the company of aggressively targeting shop owners in an effort to terminate store agreements and collect hefty penalties for alleged contract violations.

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Miami lawyer Robert Zarco, speaking yesterday before about 100 franchisees at a meeting of the Dunkin' Donuts Independent Franchise Owners in Worcester, warned that the Canton-based coffee chain has turned its loss prevention department into a "profit center" and gone after franchisees for infractions that include improper tax filings, unauthorized transfers of the business, and cracked floor tiles, among other claims, as a way to increase revenues during the economic slowdown.

Zarco, who is representing more than a dozen Dunkin' shop owners, said the company, in the midst of a nationwide expansion, is sending letters to franchisees telling them they have been selected to participate in an audit of the business and requesting various financial documents.

"They will find something in 99 percent of the cases that is not accurate and they will send a letter of termination, saying some of the breaches are incurable and it is inconsistent with the good will of the brand," said Zarco, who has represented franchisees in cases involving more than 300 companies. "By far and away, Dunkin' is the most litigious brand out there."

Dunkin', in a statement, said all employees and franchisees are held to the highest standards of professional and ethical contact and the company maintains the right to pursue legal action to remove franchisees who are in violation of any local, state, or federal laws. The business, which has 2,000 franchisees, said any legal action it takes is intended to protect all shop owners and ensure that customers have a consistently outstanding experience.

"Dunkin' Brands has never pursued litigation against a franchisee without clear cause, nor will we," Dunkin' Brands chief executive Nigel Travis wrote in a letter to franchisees. Dunkin' spokesman Andrew Mastrangelo said in a statement: "It is also irresponsible and incorrect to imply that litigation is in any way part of Dunkin' Donuts' strategy for profitability. In 2008, despite the economic down cycle, Dunkin' Donuts global system-wide sales were up 5 percent and we opened more than 1,300 new stores worldwide."

Stuart Morris, president of QSR Consulting Group Inc., said franchise disputes are typically dealt with internally and it is unusual for such conflicts to go as far as the legal system.

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"It's poor for your brand. It's tough to sell the brand to new franchisees if you have all this litigation going on," Morris said.

Zarco, the attorney, said the fines charged to settle some of the allegations are arbitrary and not spelled out in any documents, and have ranged from tens of thousands of dollars to upwards of \$2 million. Zarco has won at least two cases related to the fees on behalf of franchisees, who say that the company can profit off terminations by collecting transfer fees and increasing royalty fees from new franchisees.

"It's like harassment. No one runs a 100 percent perfect business," said one franchisee who declined to be named but said the shop had recently been targeted by Dunkin'. "There's no relation with Dunkin' anymore. We're just a number to them."

Jim Coen, president of the Dunkin' Donuts Independent Franchise Owners, said yesterday that he does not understand the company's legal strategy and that it is difficult to find another franchisor targeting shop owners to this extent.

Dunkin' was purchased in 2006 by Bain Capital and Thomas H. Lee Partners, two of Boston's largest buyout companies, and the Carlyle Group of Washington, D.C.

"We are concerned about the aggressive litigation strategy Dunkin' has pursued, rather than a collaborative approach," said Coen. "The brand uses a 'gotcha' mentality that is harsh and predatory. This has to stop."

Jenn Abelson can be reached at abelson@globe.com. ■

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