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## Australian court finds against Burger King

BY ELAINE WALKER  
ewalker@herald.com

Burger King got hit with a whopper of a judgement last week by an Australian court.

The New South Wales Supreme Court ordered the Miami fast-food chain to pay close to \$50 million in damages for unfairly terminating its development agreement with Australian franchisee Hungry Jack's restaurant group.

The judge found that Burger King set out to "disrupt and thwart" Hungry Jack's operation in order to take over the potentially lucrative Australian market itself.

"Burger King's arrogant and brazen attempt to take over what doesn't belong to them was stopped in its tracks," said Miami lawyer Robert Zarco, who was part of the legal team representing Hungry Jack's and its owner Jack Cowin.

Burger King executives said Wednesday they still are trying to digest the judge's 411-page ruling and decide on a course of action. Burger King has a month to either pay the judgement or appeal.

"We're evaluating what our options are," said Rob Doughty, a Burger King spokesman.

Since opening the first Burger King in Australia under the Hungry Jack name in 1971, Cowin's company has grown to 148 restaurants, becoming the company's largest franchisee outside of the United States. Burger King appeared happy with Hungry Jack's performance in 1990 when

it signed a new master development agreement with the company.

But a few years later, Burger King realized it was missing a golden opportunity.

In a 1993 memo included in court documents, a Burger King vice president wrote: "Burger King has no one to blame but itself in 1990 and thereafter for having ignored the Australian market and largely left the franchisee to its own devices. We continue to pay the penalty for that laissez-faire attitude."

After failing to purchase Hungry Jack, Burger King in 1996 terminated the Hungry Jack's agreement, alleging failure to meet development and operational requirements.

"We still believe our original position of termination was correct," Doughty said. "We had the right to terminate the agreement based on performance issues."

But the judge didn't agree, criticizing Burger King for breaching its agreements with the franchisee and using confidential information leaked by a Hungry Jack executive. Burger King must compensate Hungry Jack for lost profits from delayed opening of restaurants, its inability to sell third-party franchises and cannibalization from restaurants opened by Burger King in Australia.

"This is going to send reverberating waves throughout the franchise industry," said Zarco, who specializes in franchisee litigation. "Franchisees have rights, and they should stand up to franchisor abuses." ■