

BUSINESS MONDAY

The burger wars: Sizzling tales of betrayal



ONCE ALLIES: Relations have soured between Mitchell Rubinson of International Fast Food, left, and Jim Adamson, chief executive of Burger King, center. Harry H. Grindrod, at far right, is another International Fast Food official.

A franchisee alleges fraud and breach of contract, claiming Burger King is guilty of nonsupport. Burger King counters that he operated his own way—and not the BK way.

By **DAVID LYONS**
Herald Staff Writer

When Miami Beach entrepreneur Mitchell Rubinson and Burger King agreed to sell Yankee fast food in post-Iron Curtain Poland, both sides figured they had unlocked a vault to big profits.

In Warsaw and elsewhere, bands played, ads blared and crowds of people eagerly queued up for a first bite from burgers American-style.

But since the grand openings of five years ago, the smiles have yielded to professional-courtesy handshakes between dueling lawyers. Rubinson's company, International Fast Food, and Miami-based Burger King, a subsidiary of Grand Metropolitan PLC of Great Britain, are battling in Dade Circuit Court. Rubinson is alleging fraud and breach of contract,

claiming that Burger King is guilty of nonsupport. Peel away the trappings of a business dispute, and one might think IFF vs. BKC is a bitter divorce case.

"Cinderella was a princess compared to how Burger King IFF," complained Miami attorney Joel Hirschhorn in an opening statement to a jury last week. His client is seeking \$22 million in damages.

The company counters that Rubinson operated his way instead of the Burger King way, and spent precious dollars on perks and even other businesses that have nothing to do with hamburgers.

Such haggling between franchisee and franchiser isn't confined to Burger King or to the burger business. As with the rising divorce rate, legal battles are proliferating in the world of franchising, from bagels and chicken, to oil changing and car mufflers.

"There are a lot of disgruntled franchisees among the major [franchise] systems," contended Miami lawyer Robert Zarco, who is pursuing cases against Burger King on behalf of franchisees in France and Europe. "It is a big, big issue in today's small-business world — the whole franchiser-franchisee relationship."



Zarco has created a niche for himself. He represents unhappy business people who claim they didn't get their money's worth after signing on with big franchisers.

Franchise flash points

"I don't mean to say every franchisee is good or every franchiser is bad," he said. "There are a lot more problems than the public is aware of; a lot more risk than what the public believes."

Among the flash point allegations:

- Encroachment, where a franchiser places a new franchisee close to an incumbent operator's territory.
- Inflation of sales projections.
- Lack of support in marketing and advertising.
- Improper pricing of product supplies.
- Misuse of advertising funds.

Mark Giresi, senior vice president and general counsel at Burger King, said the U.S. franchising industry is actually seeing fewer disputes going to court.

"I think part of that is attributable to franchisers working closely with franchisees, and the franchisers' commitment to working through disputes in a nonadversarial way," he said.

But many disputes are being funneled into a mediation program to keep contract rows from becoming expensive court battles. Burger King is among nine corporations that founded the nonprofit program in late 1992. Since its formation, 85 percent of the disputes that entered mediation were resolved successfully.

"In franchise relations in particular, costs can be damaging," said Matthew She (pronounced SHAY), vice president and chief counsel for the International Franchise Association in Washington. The group has 600 franchisers on its

roster, as well as franchisees representing 30,000 outlets in various industries.

"You get involved in litigation in year three of a 20-year agreement, and it has the potential to sour the relationship from the start," She said.

Competitive environment

He also suggested that a burgeoning increase in franchised industries and the growing presence of sophisticated operators have combined to create an intense competitive business environment. These days, corporations—not mom and pop operators—are dominating the franchise landscape. They are the ones most likely to challenge franchisers over how a business ought to be operated.

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"All of these companies want to increase market share and find viable locations," She said. "Franchisees frequently lament that while they are concerned about encroachment, they are more concerned with maintaining their competitive edge in the marketplace."

That appears to be the case in a simmering dispute between Burger King and a group of franchisees who control outlets in Europe and the Mideast. Members of a group calling itself the European/Middle East Franchisee Association have expressed displeasure

with Burger King management over what they perceive to be an insufficient support system.

Letters have been flying back and forth across the Atlantic for nearly two years. No lawsuits have been filed. And a national Burger King franchising group based in the United States mindful of bad press and wasted money, has advised restraint.

While incalculable at the moment, the potential for spiraling legal costs is readily apparent in the Rubinson-Burger King dispute, which entered the court system last year and was expedited for trial.

On Friday, the case was temporarily derailed when retired Circuit Judge Harold Solomo declared a mistrial before an evidence reached the jury. The decision came after Miami attorney Joel Hirschhorn, who represents Rubinson, declared toward the end of his opening statement that he was convince Burger King had defrauded his client.

Without comment, Solomo granted a defense motion for a mistrial after company lawyer argued that the statement violated professional rules of conduct and was improper under the law.

Selection of a new jury is scheduled to start Tuesday, with witnesses from Europe en route to Miami.