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Marshall Magruder claims McDonald's unfairly became his chief competitor by opening six restaurants near his two franchises in Mesa.

McDonald's called unfair

By Frank Turco
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Marshall K. Magruder spent more than 20 years in Mesa making hamburgers, fries and malts as a franchisee for McDonald's.

Now he's suing the fast-food chain for \$15 million, contending that it became his chief competitor by opening too many other McDonald's near his.

"I have no qualms about it at all," he said. "They're just not the same company I got involved with."

Magruder acquired his first franchise in 1969 when he was just 19 years old, then added another in 1974.

He charged that over the course of 13 years, beginning in 1975, McDonald's opened six restaurants and bought land for a seventh, all within five miles of his restaurants, at 1059 Main Street and 2130 W. Southern Avenue in Mesa. The closest is 1.7 miles away, he said.

"I could compete against my competitors, but I couldn't compete against another McDonald's, because you're going to go to the closest one," he said.

The opening of the new stores, he said in the suit he filed last month in U.S. District Court in Phoenix, devastated his business, cutting profits as much as 30 percent.

"Each one chipped away a little at my stores until they finally ran me right out of business," he said.

Magruder said he had to sell his Southern Avenue store back to McDonald's in 1989 for



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\$720,000 but received no money because the company kept it to pay his debts.

Two years later, he said, he lost the Main Street restaurant when McDonald's pulled his franchise, claiming he was too slow with payment of his fees.

"I didn't get anything for either one of the stores," he said.

Magruder's legal action is a countersuit filed in response to an action McDonald's filed against him a few weeks earlier. The McDonald's suit was started after Magruder threatened to sue the company if it did not pay him for losses at his restaurants.

McDonald's would not discuss the case.

"Our lawsuit speaks for itself," said Ann Connolly, a spokeswoman for the Oak Brook, Ill.-based chain.

In its suit, McDonald's claims Magruder not only discharged the company from any type of

Ex-franchisee sues chain

liabilities or losses when he left the chain, but owes it \$140,000 in back fees.

"That's just not so," argued Robert Zarco, a Miami lawyer Magruder hired to handle his case.

Zarco maintained that McDonald's was trying to rid itself of older franchisees that were paying annual fees of about 8 percent of gross revenues and replace them with newer ones who were charged at least twice as much.

"We are certain that a jury will agree that Mr. Magruder was singled out as a target of an ongoing, malicious campaign to drive him out of business to make way for more-lucrative franchisees for the corporation," Zarco said.

The attorney has a similar suit going against Burger King on behalf of a Florida business-

man. Zarco said McDonald's violated its "implied covenant of good faith and fair dealing, which it owes to all franchisees," by locating outlets too close to Magruder's.

He also accused the company of interfering with Magruder's business operations, making financial promises it never kept, preventing him from obtaining new outlets that were opening near his own, and thwarting his attempts to sell his Southern Avenue store for more than McDonald's paid.

Magruder, whose father is a former McDonald's operator and whose three brothers run 18 McDonald's in the Phoenix and San Francisco areas, acquired his first franchise with money he was awarded after being struck by a truck as a youngster. His father ran the business until Magruder was 21.

"Working for McDonald's is all I've ever done," he said. "And now I'm spending all of my time working on a lawsuit against the company."