



A franchisee association filed a lawsuit against Burger King Holdings Inc., challenging the franchisor's right to dictate maximum prices.

BK suit highlights franchisee friction

BY RON RUGGLESS

MIAMI—The fight within the Burger King system over the \$1 double cheeseburger could have far-reaching repercussions in a franchising world rife with value deals.

The lawsuit filed Nov. 10 in U.S. District Court for the Southern District of Florida by Burger King's franchisee association claims that Miami-based Burger King Holdings Inc. does not have the authority under its franchise agreements to dictate maximum prices. It stems from a \$1 double cheeseburger limited-time offer that began in October, which franchisees claim is forcing them to lose a dime or more per sandwich.

"This case, if you take the allegations in the complaint as true, is about whether a franchisor can impose on a franchisee the obligation to sell a product below that franchisee's cost," said Michael Dady, a partner in the law firm of Dady & Garner in Minneapolis. "The principle scares me. It has broad negative implications for other franchisees and dealers."

In a statement, Burger King said it "believes the lawsuit is without merit." The company noted that a U.S. 11th Circuit Court of Appeals earlier this year ruled that Burger King "has the contractual right to require franchisee participation in its BK Value Menu program."

Still, the lawsuit has escalated

frictions within the BK system — and others are watching closely.

A day after filing the suit, the Atlanta-based National Franchise Association, or NFA, sent a letter to Burger King's board, stating, "Your management team has pushed the franchise community to the brink." The NFA represents about 80 percent, or 5,200 locations, of Burger King's U.S. franchise base. Burger King has more than 12,000 stores in 74 nations.

Days later an e-mail from Charles Fallon, president of Burger King's North American division, to some franchisees was leaked to the media.

"This negative publicity is detracting all of us from running our business and, just as important, lowering the value of our individual businesses," Fallon's e-mail warned. "Bankers, landlords, suppliers and potential new franchisees are watching and listening — potentially leading to less lending, at higher rates and increased equity participation."

Dady, who specializes in franchise law, likened the case to an auto manufacturer requiring auto dealers to take a loss on every vehicle sale but to make it up on volume.

"I don't like the equities of a manufacturer or franchisor setting a maximum retail price that forces the franchisee to sell below cost," Dady said. "It's a bad idea."

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