

Domino's decision could have big impact, or not

By Jonathan Maze

As published in: Franchise Times - August 2007

When Domino's Pizza told franchisees in 2003 they would have to purchase the company's own computer system within four years, Kevin Bores was caught off guard. Franchisees were typically allowed to shop around for better prices on supplies and equipment. Rarely were such requirements handed down.

"It certainly put the ears up early on," said the 54-year-old who owns 11 stores in Southern Minnesota and the Kansas City area. The more he and other franchisees looked at the computer system, the less they liked the deal. Ultimately, they took their franchisor to court.

In May, a federal judge in Minneapolis agreed with the franchisees, saying Domino's breached its franchise agreement by requiring franchisees to purchase the new system, called PULSE, only from the company. The judge ordered the company to give storeowners the system's specifications so they could compare prices.

The case and subsequent decision have received considerable attention among franchise consultants and legal experts who debate its potential impact on franchisors around the country.

Some believe it will cause franchisors nationwide to rethink their franchise agreements to ensure they are clear in giving the corporation the right to dictate where franchisees buy products or equipment. "The next UFOC I write, I'm going to be very cognizant of this decision," said Adam Siegelheim, a transaction attorney with the New Jersey-based firm of Stark & Stark.

Others don't believe it will have much of an impact, and that may include the judge who called it "little more than a garden-variety breach-of-contract suit." "It's a big deal for the franchisees," said David Kaufmann, of the New York City firm of Kaufmann, Feiner, Yamin, Gildin & Robbins. "But it isn't a precedent-breaking decision that should strike fear into the hearts of franchisors."

Domino's spent years working on PULSE, a comprehensive computer system with touch-screen technology and Internet access that is designed to speed up ordering, scheduling and other back-office functions. The company believes that the system will improve the company's overall operation—as well as that of individual franchises. "It's a crucial element to the foundation of a much bigger vision," said Tim McIntyre, vice president of communications for the company, which has 8,200 stores worldwide. More than half of those stores now use the system.

McIntyre said the system is unique, and the company didn't want to provide specifications, which could get the unique technology into the hands of third-party software and hardware vendors—and then into the hands of competitors.

Franchisees, however, were initially concerned about the system's cost. They also believed the cost of the system wasn't capped under the deal, yet Domino's wouldn't guarantee the system. "The more we looked into it, the more questions we had," Bores said.

Ultimately, the judge ruled in the franchisees' favor on one of their six charges, but it was the biggest: breach of contract. The judge said the company wasn't explicit enough in reserving the right to determine the supplier of computer hardware and software in its franchise agreement. "... The agreements are clear and unambiguous and do not permit Domino's to mandate the installation of PULSE by its franchisees," the judge said.

The company disagreed with the ruling. McIntyre said, but will comply with the requirement to hand over the specifications, giving franchisees a year to search for a vendor. He said the company is weighing its options as to an appeal.

Kaufmann said Domino's made a simple mistake by not reserving the right to be the sole supplier of computer equipment to franchisees. The company, he said, should have taken into account the potential for technological advances when it drafted its franchise agreement. "You really have to anticipate the vast changes that the future can bring," he said, calling that mistake an "aberration" among franchisors the size of Domino's.

But Michael Dady, an attorney for the franchisees, didn't think it was a mistake. Franchisors that make themselves the sole supplier of equipment in their franchise agreements can run afoul of antitrust laws, he said. Domino's likely took that into account when drafting the agreement. "There's a reason their lawyers wrote the language they did," Dady said.

At the very least, the case illustrates the emotions that can surface during disputes between franchisors and franchisees and the importance of communication in avoiding them.

The animosity between the two sides was evident during the first 18 months of the case, which were marked by frequent motions, charges and countercharges. This clearly frustrated the judge, who in his opening remarks admonished the initial attorneys in the case—Foley & Mansfield and the Goldstein Law Group for the franchisees and Gray Plant Mooty for Domino's—for the way it had been handled.

Kyle complained about "scorched-earth litigators" who left "no stone unturned" during the first 18 months of the case. He also wondered why the case "devolved into a legal donnybrook punctuated by frequent name calling and invective and into which the parties, unfortunately, repeatedly dragged the court." In March the franchisees replaced the Goldstein Group with Dady & Garner out of Minneapolis and both sides quickly moved for a decision.