

Life After the Sudden Demise of a Known Brand

8/18/2008

If a single restaurant in a chain goes out of business, less than a ripple may be felt, but when the entire brand gets blown away, franchisees may have to scramble for cover.

While the long-term future of the Bennigan's Grill & Tavern casual-dining brand remains in question following parent company **S&A Restaurant Corp.**'s bankruptcy late last month, Vineland-based franchisee **Tower Hospitality** is still serving patrons at its Bennigan's.

"We can put out the current Bennigan's products without any issue," says **Chris Eppers**, chief operating officer for Tower.

Eppers says the closure of Bennigan's corporate entity came with little warning to franchisees. "I caught the story a little after midnight on the Internet," he says. An e-mail notice the morning of July 29 confirmed the Chapter 7 bankruptcy filing by S&A, of Plano, Texas. More than 100 company-operated locations shut down nationwide because of the bankruptcy. Calls to eight of the nine New Jersey Bennigan's restaurants remain unanswered.

Eppers says franchise manager Tower Hospitality immediately put the word out to the public that the Vineland location and its staff of 63 were open for business. Tower Hospitality uses a third-party food distributor to supply its Bennigan's restaurant. Tower also operates other franchises in southern New Jersey, including Denny's in Vineland and Northfield, and three hotels in Vineland.

Bennigan's Franchising Company and **Steak & Ale Franchising Company**, also based in Plano, say they own the respective trademarks of the restaurant chains as well as the franchise agreements. On Aug. 11, Bennigan's Franchising said in a statement it planned to expand the chain, with franchisees potentially purchasing former company-owned restaurants. Bennigan's Franchising also appointed New York City turnaround management firm CRG Partners to help with the transition of ownership and management of the franchise system. "As the smoke clears, all those things are getting settled," Eppers says. "Right now we are authorized to continue under the franchise name."

Tower Hospitality is used to a share of autonomy, Eppers says. The franchise owner purchases its entrees from wholesale food-distributor **MBM Corp.** in Rocky Mount, N.C. Eppers says S&A had very limited involvement in marketing, and did not supply its franchisees. "[Bennigan's] had no national marketing campaign," he says. "You don't see Bennigan's on TV or anything of that nature."

Jack Armstrong, president of franchise consultancy **FranNet New Jersey** in Metuchen, says forming a collective group to get bulk rates from distributors may help franchisees that have been left on their own. "If it's a Bennigan's with a contract with **Sysco Foods**, can they maintain the same attractive prices?" he asks. "You probably will get together with other franchisees to form a buying co-op."

Business functions once handled by the corporate entity, such as the development of new services and products, now land in the laps of franchisees, Armstrong says. The corporate Web site that once listed all of Bennigan's locations with local contact information is currently shutdown, limiting chances for new patrons to find the surviving restaurants.

Without a corporate overseer to plan strategy, a brand may wither. "From the franchisee's perspective, there's not going to be any new growth," Armstrong says. "No one is going to be selling new franchises. Your brand name might not develop much more."

He also warns that a franchisee operating under a bankrupt chain may face eviction if the corporate parent held the property lease. A landlord looking to raise the rent may use the bankruptcy to force the tenant out, Armstrong says. He recommends that a franchisee review the franchiser's financial statements annually to better prepare for disaster. "It's tough to do anything after the cows are out," Armstrong says.

Even if franchisees keep the lights on, the chain's brand identity may be up for grabs in a bankruptcy, says **Adam**

J. Siegelheim, an attorney in the franchise law group **Stark & Stark** in Lawrenceville. Control over restaurant appearance, uniforms and menu items once held by the franchisor could be bought by another entity. Bennigan's Franchising claims ownership of the trademark.

"The franchise system is everything from the way the restaurants look to what they serve and the processes they use," Siegelheim says. That means, if the new owner of the trademark relaunches a bankrupt brand, any remaining franchisees may have to renegotiate contracts and licensing agreements.

"A franchise agreement only gives you the use of the trademark or operating system," says **Kay Ainsley**, managing director with franchise consulting firm **Michael H. Seid & Associates** in Kennesaw, Ga. It is not unheard of, she says, for franchisees to band together to secure control of the trademark as a collective.

When **American Hospitality Concepts Inc.** in Braintree, Mass., owners of Ground Round Grill & Bar, went bankrupt in 2004, Ainsley says franchisees acquired control of the brand and maintained the restaurant chain. Regardless of Bennigan's recent collapse, Kaye says the franchising market is still thriving. "A lot of people who lose their jobs will consider franchising," she says.

E-mail to jpruth@njbiz.com