

# The Bobbie® Bares All: A Case Study of Capriotti's Sandwich Shop®

By Kristie Pichler and Mahmood Khan

## Introduction

Though franchising has been in existence for decades, the business concept is breathing new life for the entrepreneurial-minded. Franchising is the ever-expanding use of selling a business model or concept in order to increase market share and capital. Hand-in-hand with franchising is the marketing application known as brand management. Brand management is the relationship between corporate brands and the perceived value of that brand by the consumer. This delicate relationship is continuously evolving as consumers become more and more knowledgeable with product choices.

Since its inception in 1931, brand management and the art of developing a brand has developed into a revolutionary notion within the marketing industry. As a result, product differentiation was born. When used correctly, brand management can influence the behavior of consumers in their decision-making process as one brand is perceived to be a better value over competitors.

This case study, and the events that surround it, illustrates the importance of protecting a corporate brand for the well-being of the company. The aim of this case study is to provide an understanding of the functions of marketing in an evolving consumer's world and the structures of business operations specifically within the industry of franchising. The expected learning outcomes include analyzing the legal implications of business decisions associated with marketing and their relevance to brand management; understanding the obligations placed on franchisees by franchisors regarding brand image and assessing the responsibilities in sustaining the reputation of a highly-regarded and profitable company; interpreting how a series of events surrounding a promotional campaign can reveal critical communication and legal issues; evaluating and applying decision elements regarding potential image restoration strategies by implementing strategic marketing fundamentals; and comprehending the importance of corporate crisis communication practices and strategies.

## Background

Capriotti's Sandwich Shop® (Capriotti's®) was founded in Wilmington, Delaware in 1976 by siblings Lois and Alan Margolet. The brother/

sister team named the sandwich shop after Philip Capriotti, their maternal grandfather who had had a passion for cooking. As the family business grew to include more restaurants, other members of the family became involved in the business operations.

Capriotti's quickly became known for its signature sandwich, the Bobbie®, named after the Margolets' Aunt Bobbi Capriotti. The award-winning, nationally-acclaimed menu item is a combination of in-house roasted turkey, cranberry sauce, stuffing, and mayo – basically, it is Thanksgiving dinner in a submarine sandwich. The Margolets began offering Capriotti's franchising opportunities to the public in 1991 through Al-Lomar, Inc. The family eventually relocated to Nevada, and in April 1993 the first Las Vegas Capriotti's opened its doors.

In 2008, an investment group led by Ashley Morris, a Capriotti's franchisee since 2004, acquired the Capriotti's franchising system from Al-Lomar. Under Capriotti's Sandwich Shop, Inc., Morris' first objective involved the unveiling of a franchising strategy that projected the opening of up to 500 stores by 2015 (Stapp, 2010). Despite the aggressive expansion plan, Morris said the goal was to "maintain the company's small-town feel" (Handley 2009:74).

Today, Capriotti's can be found in 12 U.S. states (Capriotti's Sandwich Shop, Inc. 2011). The franchise chain has more than 70 stores, all of which feature a casual atmosphere with recognizable design, décor, and color scheme (red, black, and white). The company's public relations director, Sabina Gault, captured the essence of Capriotti's core competency when she said, "It feels like you're going to somebody's house" (Handley 2009:74).

In January 2012, Patrick Walls was promoted to president of Capriotti's Sandwich Shop Inc., a position held by Morris up until that time. Walls, has been Capriotti's chief operating officer since 2009. Morris remains as chief executive officer (Jennings 2012).

## The Franchise Agreement

Even though the country was entering a deep recession in 2008, Morris was expanding Capriotti's into new markets, which meant establishing new franchisee relations. Capriotti's Sandwich Shop, Inc. spent considerable time reorganizing the company's structure and the franchising business model. A revised Franchise Disclosure Document (FDD) was designed to govern the franchise relationship between Capriotti's and franchisees.

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The FDD was designed to ensure that franchisees maintained the highest degree of quality and service under Capriotti's brand image. "We have a long screening process to gauge whether [franchisees] have the passion and understanding of our business model and can execute our business model," said Morris. "The best candidates are those who understand our concept specifically" (Smith 2012).

Through Capriotti's franchising agreement, franchisees are granted a license to use Capriotti's "trade names, trade dresses, other service marks, trademarks, copyrights, symbols, logos, characters, designs, illustrations, art works, titles, and slogans" (Capriotti's Sandwich Shop, Inc. 2011:2).

The following excerpts were taken from the April 18, 2011 version of Capriotti's current FDD.

*Restrictions on Sources of Products and Services*

You must submit to us (through the mail, return receipt




requested), for our prior written approval, samples of all advertising and promotional plans and materials that you desire to use and which we have not prepared or previously approved. You must display the Marks in the manner we require on all signs and other advertising and promotional materials used in the Franchised Restaurant.

[You] must take steps necessary to correct immediately any deficiencies detected during any inspection, including immediately desisting from the continued use of any equipment, advertising materials, products or supplies that do not conform to our then-current specifications, standards or requirements.

You must not engage in any trade practice or other activity which is harmful to the goodwill or reflects unfavorably on our reputation, the products sold from the Franchised Restaurant or which constitutes deceptive or unfair competi-

**Table 1**

**Registered Trademarks**

Mark	Registration Number	Date of Registration
<p>"The Bobbie"</p> 	2,273,912	August 31, 1999
<p>"Capriotti's"</p> 	3,015,434	November 15, 2005
<p>"Capriotti's Sandwich Shop"</p>	3,530,393	November 11, 2008
<p>"Capriotti's Sandwich Shop" (with ("Est. 1976"))</p> 	3,571,960	February 10, 2009
"Capastrami"	3,718,476	December 1, 2009
"Slaw Be Joe"	3,718,480	December 1, 2009
"Cole Turkey"	3,718,481	December 1, 2009
"Cran-Slam Club"	3,718,481	December 1, 2009
"Extraordinary Food For Those Unwilling To Settle!"	3,863,639	October 19, 2010

[Source: Capriotti's Sandwich Shop, Inc. 2011:28]

tion or which otherwise is in violation of any applicable laws.

*Franchisor's Assistance, Advertising, Computer Systems and Training*

Advertising. You may develop advertising materials for their own use, at your own cost. We must approve any advertising material you develop in advance and in writing. There is no obligation for us to maintain any advertising program or to spend any amount on advertising in your area. At your option, we may assist you in promoting the franchised restaurant through advertising and public relations in our sole discretion. We make no representations, warranties and/or covenants, express or implied, as to the existence, nature and/or extent, if any, of any advertising and/or public relations efforts, if any, that may be commended, participated in and/or allowed by us.

*Trademarks*

Registrations and Applications. The following service marks (see Table 1) have been listed on the Principal Register of the United States Patent & Trademark Office ("USPTO").

Protection of Rights. You must notify us promptly of any use by any person or legal entity other than us or our franchisees, of any of the Marks or any variation of the Marks.

*Restrictions on What the Franchisee May Sell*

You must not engage in any trade practice or other activity or sell any product or literature which is competitive, harmful to the goodwill or reflects unfavorably on your reputation, us, the Franchised Restaurant or the products sold there or constitutes deceptive or unfair competition or otherwise is in violation of any applicable laws. Source: Capriotti's Sandwich Shop, Inc. 2011:14-32

The Trademark Act of 1946, also known as the Lanham Act (15 USCS §1127), regulates the use of trademarks in commercial activity in

the U.S. Under this act, franchisors with registered trademarks retain certain rights which prevent the unlawful use of the given trademarks by others. "The term 'trademark' includes any 'word, name, symbol, or device, or any combination thereof...to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown'" (Wilson 2003:48).

One of the major disadvantages of franchising to the franchisor is the loss of operational control, which can lead to lower levels of quality and even a dilution in the perceived value of the franchise's brand image and associated trademarks. The ultimate penalty franchisors can execute in order to enforce their standards of operation is the termination of a franchise agreement with a particular franchisee. Capriotti's addresses the implications associated with misusing the franchise trademark in their FDD (see Appendix A). Violations to the franchise trademark could result in termination, court claims, and injunctions.

Potential franchisees can, and should, use the contents of the associated FDD as a research tool to address industry concerns, such as "franchise churning". "Churning" is a form of franchise fraud. Typically, this form of fraud is usually discovered after a prospective franchisee pays the initial franchise fee. The real profit has then already been realized by the franchisor. The emphasis is placed on simply selling franchises, not on generating and sustaining a profit post-sale. Franchisees can identify "churning" within the FDD by assessing any unusual fluctuation in the number of establishments in operation for the preceding three years (see Table 2).

In addition to disclosing the statistical information on the number of franchised and company-owned outlets, a franchisor is required to release the number of outlets that have been terminated (see Table 3). "Termination" means the franchisor's termination of a franchise agreement prior to the end of its term without providing any money or other consideration to the franchisee" (Herman 2011).

**Table 2**

**Summary of Outlets [Modified]**

Outlet type	Year	Outlets at the start of the year	Outlets at the end of the year	Net change
Franchised	2008	46	48	+2
	2009	48	54	+6
	2010	54	62	+8
Company-owned	2008	1	1	0
	2009	1	2	+1
	2010	2	3	+1
Total Outlets	2008	47	49	+2
	2009	49	56	+7
	2010	56	65	+9

[Source: Capriotti's Sandwich Shop, Inc. 2011:45]

**The Promotion**

In October 2011, Capriotti's franchisee Natalie Delucia Taylor was contacted by Skip Waugh, manager of "Crazy Horse III," an adult entertainment establishment located in Las Vegas, Nevada. The Crazy Horse III has developed its reputation on featuring topless female dancers and alcoholic beverages. During this conversation, Waugh inquired

**Table 3**

**Status of Franchised Outlets [Modified]**

State	Year	Terminations
Total Outlets	2008	1
	2009	1
	2010	0

[Source: *Capriotti's Sandwich Shop, Inc.* 2011:47-48]

about purchasing Capriotti's signature sandwich in bulk to feed approximately 40 to 80 people (Taylor Family Holdings, Inc. v. Capriotti's Sandwich Shop, Inc. 2012). Taylor followed up with Waugh via email in order to provide additional information and pricing. (Taylor Family Holdings, Inc. v. Capriotti's Sandwich Shop, Inc. 2012)

On November 8, 2011, Taylor engaged in another conversation with Waugh during which Waugh allegedly discussed the two establishments teaming up in a joint advertising campaign. Waugh was hoping the joint promotion would "entice more customers into visiting the club during the lunch hour" (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012:8). Taylor reportedly explained Capriotti's advertising policies prior to Waugh placing a large order of sandwiches; however, Waugh claimed that Taylor later "approved the use of the Capriotti's logo on the promotional flyer so long as it was small" (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012:9). Waugh placed additional orders on each of the next four consecutive days. In total, Waugh purchased 47 sandwiches. (Taylor Family Holdings, Inc. v. Capriotti's Sandwich Shop, Inc. 2012)

Over the five days during which Crazy Horse III was purchasing Capriotti's sandwiches in high volume, Las Vegas-based radio stations, including the local ESPN affiliate, and various social media outlets ranging from Facebook to local blogs were plugging the area's newest joint venture: "a match made in Vegas heaven: boobs and Bobbies." The promoters shouted, "Guests will receive a delicious six-inch sandwich from celebrated sandwich shop, Capriotti's, along with a refreshing beer or soda for only \$5" (McCabe-Joy 2011).

As word-of-mouth spread, additional social media campaigns started commenting on the deal. On November 15, 2011, Las Vegas Weekly encouraged readers to take advantage of the "Crazy Bobbie III," noting that the special was being offered from 1PM to 7PM, seven days a week. The snippet suggested that the promotion was "a sweet deal, with or without the boobs" (Feldberg 2011).

As area consumers learned of the marketing campaign, so too did other Capriotti's franchisees. "(W)e received multiple complaints from our other Las Vegas-area franchisees who independently learned of this unauthorized promotion and association through the publicity it received on radio and over the Internet" (O'Reiley 2012), reported Walls.

"Alarmed and disturbed by this direct and improper association of the Capriotti's marks with sexually-oriented entertainment," (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012:5) Capriotti's Sandwich Shop, Inc. immediately served a notice of default, dated November 15, 2011, to Taylor, underlining the breach of contract for the unauthorized use of its marks and stressing the potential damage to the company's reputation and goodwill (see Appendix B). Taylor was allowed five (5) days to provide evidence in writing of the end of the improper relationship with Crazy Horse III and to terminate any on-going advertising activity linked to the racy promotion. (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012)

According to court records, Taylor said she promptly called Waugh to rectify the situation. Taylor reportedly explained to Waugh that the joint-promotion was over, effective immediately, detailing that the advertising with the adult club was not allowed, but that she also could not do business with Waugh. (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012) Two days later, Taylor "left the country on vacation... without informing her business partners or anyone on her staff of the issue" (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012:11).

Daily Fiasco showcased an article on November 17, 2011 titled "Capriotti's Takes It Off," which included a snapshot of a clip from the movie Closer. The image (Figure 1) features a partially-clothed exotic dancer along with a gentleman patron who is holding a photo-shopped sandwich, representing the Bobbie® (Scavone 2011).

The Daily Fiasco article goes so far as to question the desperation in the business promotion. "We're not sure who comes off as more desperate in this situation. Is it Crazy Horse for not trusting nudity to be a strong enough selling point? [Or] is it Capriotti's, clearly bowing to the demands of their delivery guys who want to make that run every day?" (Scavone 2011)

Capriotti's sent a cease-and-desist demand to Crazy Horse III on November 18, 2011, demanding the immediate end of the Capriotti's-related happy hour promotion. A formal notice of termination was released on November 28, 2011 to Taylor. (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012)

In a letter from Taylor to Capriotti's, dated December 7, 2011, Taylor denied any knowledge of the promotion. Taylor claimed to be unaware of Crazy Horse III's intention to resell the sandwiches to its patrons. In fact, the order placed on the second day with Taylor's Capriotti's location included a request from Crazy Horse III to omit onions from all sandwiches because it affected the dancers' breath. As a result, Taylor believed the sandwiches were intended for the employees of gentlemen's club. (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012)

In a December 9, 2011 response from Capriotti's, the company

reiterated the termination of Taylor's Franchise Agreement. In addition, Capriotti's offered to purchase the assets associated with Taylor's restaurant for \$50,000. Taylor had until December 19, 2011 to inform Capriotti's of her intention regarding the offer. Capriotti's also questioned why Crazy Horse III opted to purchase sandwiches from Taylor's restaurant, located 12 miles away from the adult establishment, when a number of other Capriotti's restaurants were closer in proximity. (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012)

When Taylor failed to respond, a cease-and-desist letter dated December 21, 2011 was released by Capriotti's to Taylor. Despite the legal warning, Taylor continued operating under Capriotti's name. In a letter to Capriotti's Sandwich Shop dated December 30, 2011, Taylor requests that the two parties come to an agreement outside of court (see Appendix C). (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012)

## The Legal Challenges

On January 17, 2012, Capriotti's Sandwich Shop Inc. filed formal legal action in Delaware against Taylor. The Federal Court lawsuit seeks action for service mark infringement, unfair competition, breach of contract, breach of guarantee, and unjust enrichment (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012). This lawsuit is ultimately pursuing a ruling to protect its economic, intellectual, and creative property by citing the law of unfair competition, which seeks to preserve corporate brand image. In addition to relying on the Lanham Trademark Act for the service mark infringement, Capriotti's is addressing what is believed to be the deceptive and fraudulent activity on the part of Taylor. By citing unjust enrichment, Capriotti's is accusing Taylor of financially benefiting from the unauthorized promotion and the misuse of the Capriotti's trademark. "As a 35-year-old brand, we have an obligation to defend and protect our trademarks, logos and trade dress. This case is an example of that" (Lopardi 2012), said Gault in an email statement. "On the same day, [Capriotti's] filed a motion for a preliminary injunction that would prohibit [Taylor] from continuing to operate their franchise" (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012:7).

One day later, Taylor filed a complaint in the Delaware Chancery Court, which typically handles business disputes, against Capriotti's for wrongful termination. Armed with a legal team, Taylor is accusing Capriotti's of termination without cause. In addition, Taylor entered an order for Status Quo until the two parties could resolve the legal matter. (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012).

According to court records, the franchisee began operating under the Capriotti's name in 2003 when she signed a franchise agreement with Al-Lomar Inc. Taylor paid the initial Franchise Fee of \$50,000 and signed the 10-year agreement terms. Taylor argued that Al-Lomar

Figure 1

## Capriotti Strippers [Adapted image from the movie, Closer]



[Retrieved from Daily Fiasco's website, February 2012]

never provided a copy of the FDD before or after signing the Franchise Agreement. In addition, Capriotti's Sandwich Shop, Inc. failed to provide Taylor with any updated FDDs despite "multiple changes to the organizational structure, purchasing requirements, and advertising expenditures" (Taylor Family Holdings, Inc. v. Capriotti's Sandwich Shop, Inc. 2012:3).

Taylor debated that the original Franchise Agreement signed with Al-Lomar held no provision which prohibits or restricts the sale of food or merchandise to adult entertainment establishments, whether for employees or for patrons of such establishments.

Following a telephone conference with the various parties in February 2012 in which Taylor "made no objection to jurisdiction," Taylor filed to "dismiss or transfer based on jurisdictional concerns" (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012:7). On April 25, 2012, Judge Robinson of the Delaware District Court refused to rule against issuing a preliminary injunction against Taylor, which would have prevented her from continuing to operate under the Capriotti's name, since a key witness to the case had not testified in Delaware. In addition, the federal judge rejected Taylor's request to dismiss the case, but granted the motion to transfer the case to a Nevada courtroom. (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012)

On May 11, 2012, this trademark infringement case was officially transferred to the Nevada District Court. According to court records, while Delaware courts were a reasonable venue to hear this case, "the dispute arose in Nevada between two Nevada-based businesses and only a Nevada court can exercise personal jurisdiction over critical fact witnesses, particularly Skip Waugh" (Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc. 2012:21).

## Conclusion

Every franchise relationship is built around a well-drafted franchise agreement. Most, if not all, franchise agreements state specific restrictions regarding the franchisee's ability to independently advertise. While the franchise agreement serves as the foundation for the business model, the delicate relationship between the company's brand image and the brand position determines its reputation. Brand management is subject to influences from internal and external factors, such as the business culture and consumer behaviors, respectively.

A key issue surrounding this brand management problem is the determining the proper balance between franchisor guidance and franchisee learning. This case study sparks the debate between a company taking measures to protect its image and reputation versus an entrepreneur seeking innovative methods to develop a new customer base. In the end, this case serves as a reminder that the vital importance of the franchise agreement and that it is essential to respect its contents regardless of whether Capriotti's should have simply counseled the franchisee in appropriate corporate marketing standards or whether Taylor should not have been narrowly focused on moving products at any cost.

## Discussion Questions

- What are the advantages and disadvantages of joint promotions?
- Describe the impacts that the promotion and the legal cases have on Capriotti's brand management?
- Consider yourself to be the franchisor in this case. Critically evaluate the actions taken by Capriotti's and whether they were appropriate or inappropriate. Give reasons for your justification.
- Do you consider the Capriotti's brand image to be negatively affected by the Crazy Horse III promotion? If so, what measures should Capriotti's take to restore its brand integrity?
- Consider yourself to be the franchisee in this case. Justify why agreeing to the joint promotion was necessary for business operations given the market, the increase in royalty fees, and the competition.

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**APPENDIX A**

**Renewal, Termination, Transfer, and Dispute Resolution [Modified]**

<b>The Franchise Relationship</b>		
<b>Provision</b>	<b>Section in Franchise Agreement</b>	<b>Summary</b>
Termination by us without cause	Section 10	None.
Termination by us with cause	Section 10	We can terminate the Franchise Agreement if you default without notice for non-curable defaults and with 5 days' notice for curable defaults.
"Cause" defined – curable defaults which can be cured	Section 10	We will terminate the Franchise Agreement for "cause" if you: fail to remodel your premises or timely commence operation within 12 months of signing the Franchise Agreement; fail to pay any monies owed to us, our affiliates or the Marketing Fund; transfer ownership by persons owning 5% or more of you; threaten public health or safety; make unauthorized use of the System or Marks; have continued law violations; engage in discrimination; or have other defaults not outlined above or designated as a noncurable default.
"Cause" defined – noncurable defaults	Section 10	We will terminate the Franchise Agreement for "cause" which is noncurable if you: declare bankruptcy or assign assets to creditors; go into receivership; dissolve; have a judgment lien placed on your assets; abandon the Franchised Restaurant; or an owner of 20% or more of the franchise engage in fraud or are convicted of a felony or other crime; fail to make approved transfer within 90 days of death or incapacity; have 3 or more defaults within any 24 months; make material misrepresentations; maintain false books or records; impair the value of the Marks or System; underpay royalties by more than 10%; fail to pay taxes or unemployment insurance; or lose your business licenses.
Your obligations on termination/non-renewal	Section 10 and 11	Your obligations include: cease operating; cease using the System; return property to us; cancel any assumed names; assign the lease; pay all sums owed; return all manuals, records, files, etc.; and the taking of an inventory. You may acquire your inventory and assets.

[Source: Capriotti's Sandwich Shop, Inc. 2011:36-39]

APPENDIX B

Letter from Capriotti's COO to franchisee Taylor



VIA CERTIFIED MAIL

Airbill No. 70070710000340811238

November 15, 2011

Natalie Delucia Taylor  
Taylor Family Holdings, Inc.  
4825 South Fort Apache, Suite K  
Las Vegas, Nevada 89147

Re: Notice to Cure  
Franchise Agreement

Dear Natalie:

You are hereby notified that you are in violation of the Franchise Agreement dated March 17, 2003 between Capriotti's Sandwich Shop, Inc. (as successor to Al-Lomar, Inc.) and Taylor Family Holdings, Inc. ("Franchise Agreement"). This letter shall serve as notice that you hereby have five (5) days from receipt of this letter to correct the following failures or we may terminate the Franchise Agreement.

In violation of Sections 5 and 8 of the Franchise Agreement, you have sold food to Crazy Horse III (an adult entertainment business) for resale to their patrons and allowed (either expressly or through your acquiescence) Crazy Horse III to use the Capriotti's name and trademarks (including trademarks registered with the United States Patent and Trademark Office) to publicize this arrangement on websites and/or via other media.

It is critical to maintaining the excellent reputation of all CAPRIOTTI'S System restaurants as represented by the service mark "CAPRIOTTI'S" that each franchisee strictly comply with the terms of the Franchise Agreement and Confidential Operations Manual. Your sale of food to an adult entertainment business for resale and promotion to their customers and their use of the Capriotti's name and trademarks threaten to damage the reputation and goodwill of all existing and future CAPRIOTTI'S System restaurants.

In order to cure these defaults you must within five (5) days of your receipt of this letter submit proof in writing of the end of this relationship with Crazy Horse III and the termination of any advertisements or promotions linking Capriotti's Sandwich Shop and Crazy Horse III on any website or other media.

Your refusal or failure to take the actions set forth above within the above-specified time period will result in the immediate termination of your franchise.

5130 FORT APACHE RD  
SUITE #215-411  
LAS VEGAS, NV  
89148

866.959.3737 F  
702.736.9878 F

Ms. Natalie Delucia Taylor  
November 15, 2012  
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IF WE ARE FORCED TO TERMINATE YOUR FRANCHISE AGREEMENT, PLEASE NOTE THAT YOU WILL NOT RECEIVE A REFUND OF ANY MONIES PAID TO FRANCHISOR OR ITS AFFILIATES TO DATE. ADDITIONALLY, YOU WILL BE REQUIRED TO IMMEDIATELY DE-IDENTIFY THE FRANCHISED RESTAURANT, INCLUDING THE DELETION OF THE TRADEMARK "CAPRIOTTI'S" FROM ALL STATIONERY, SIGNS, BUSINESS CARDS AND THE LIKE, CANCEL YOUR YELLOW PAGES ADVERTISING, CHANGE YOUR TELEPHONE NUMBER, AND OTHER DE-IDENTIFICATION AS MAY BE REQUIRED BY FRANCHISOR PURSUANT TO THE FRANCHISE AGREEMENT. ADDITIONALLY, YOU WILL BE REQUIRED TO COMPLY WITH ALL COVENANTS NOT TO DISCLOSE AND COVENANTS NOT TO COMPETE AS SET FORTH IN THE FRANCHISE AGREEMENT. YOU WILL ALSO BE RESPONSIBLE FOR ANY ACTUAL OR SPECIAL DAMAGES RESULTING FROM THE MISUSE OF THE CAPRIOTTI'S TRADEMARKS.

Please contact me to schedule a meeting to discuss this matter with Ashley.

Very truly yours,

Patrick K. Walls  
Chief Operating Officer &  
General Counsel

PKW/pat

[Source: Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc., Exhibit I, 2012.]



Letter from legal offices representing franchisee Taylor to legal representation for Capriotti's

ELZUFON AUSTIN REARDON
TARLOV & MONDELL, P.A.

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JEFFREY M. AUSTIN
MARK L. REARDON
EDWARD A. TARLOV
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December 30, 2011

VIA E-MAIL - rsmith@wileyrein.com
and FIRST-CLASS MAIL

Robert A. Smith, Esquire
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006

Re: Taylor Family Holdings, Inc. Notice of Termination
Capriotti's Sandwich Shop Franchise Agreement dated March 17, 2003
EARTM #270084.25490

Dear Robert:

As you know, this office, along with Mark Kulla, represents Taylor Family Holdings with regard to the dispute that presently exists between it, as franchisee, and Capriotti's, as franchisor.

As you are probably aware, at a recent meeting between Ashley Morris and Natalie De Lucia, Mr. Morris advised Natalie that if the franchisee did not cease and desist then Capriotti's, as franchisor, will file a TRO and whatever else it felt was necessary to protect its rights.

The expense of pursuing preliminary injunctive relief in Delaware or Nevada does not appear to be in either of our clients' best interests. Therefore, we are proposing that we reach an interim agreement to maintain the status quo. We anticipate that such agreement would permit Ms. De Lucia to continue to operate her franchise while still meeting her obligations to your client under the franchise agreement. We propose that such agreement remain in effect while we explore whether an amicable solution is achievable through negotiation and, in the event that a compromised agreement becomes hopeless, we would propose that the standing agreement remain in effect while we explore whether mediation, arbitration or litigation is the appropriate

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mechanism for achieving resolution and for the duration of any such litigation. If your client is disinclined to agree, we regret that we will be forced to go on the offensive with the initiation of an adversary proceeding in Delaware Chancery Court where our client will seek to avail herself of all the statutory remedies available.

Our client's adversary claim will raise as an issue the fact that we believe our client has been contributing to a "national advertising fund" through payment of inflated prices for food costs charged by recently approved vendors and monthly deductions from our client's bank account on a percentage basis. Such fees were never disclosed in the FA and, in pursuit of this claim, we will be requesting an immediate accounting of all monies paid by our client under the FA as well as an explanation for the substantial inflation of food costs charged by Sysco and other vendors.

Again, it is our hope that this can be resolved amicably and, as stated in my prior letter feel free to contact me (302-504-3221) or Mark Kulla (702-385-4994). If you have any questions, please call.

Very truly yours,
[Signature]
JOHN A. ELZUFON

JAE/bgb

cc: Mark A. Kulla, Esquire - via e-mail, attorney@lasvegas.net
Natalie De Lucia - via e-mail, ndelucia13@gmail.com
Colleen D. Shields, Esquire - via e-mail, cshields@elzufon.com
Peter S. Murphy, Esquire - via e-mail, pmurphy@elzufon.com

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