# teaching note

## Summary

This case study examines a 2012 court case regarding an unapproved joint promotional campaign between a franchised Capriotti's restaurant and an adult entertainment establishment. For over 30 years, Capriotti's has developed its brand image to be synonymous with family-friendly food and service. Capriotti's cult-like following of loyal consumers have grown to love how employees call out customers by name, making this chain feel more like a neighborhood deli. Capriotti's is angered that their name is now being associated with lap dances. This case study traces the relationships between franchisor, franchisee, and acceptable business practices within the confines of a contract.

## Background and Description

Franchising is on the rise, though the business concept has been in existence for decades. 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.

The marketing concept of brand management was coined by Procter and Gamble in 1931. 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. Discussions can highlight areas of importance in marketing, ethical business management, and franchisor-franchisee relations.

## Learning Objectives

This case study is designed to provide students with a comprehensive understanding of the functions of marketing and structures of business operations, specifically within the industry of franchising. The nature of this case study makes it applicable to various subjects and courses. As a result, the teaching objectives for this case study can be manipulated for the subject or course in which it is being used. The following lends itself to as a guide for objectives that can be explored or discussed in a teaching environment. On successful completion of this case study, the learner will be able to:

- Discuss the legal implications of business decisions associated with marketing and their relevance to brand management;
- Explain the obligations placed on franchisees by franchisors regarding brand image and outline the responsibilities in sustaining the reputation of a highly-regarded and profitable company;
- Illustrate how a series of events surrounding a promotional campaign can reveal critical communication and legal issues;
- Enable the reader to effectively evaluate and apply potential image restoration strategies through the use of the seven Ps of marketing; and
- Encourage critical analysis and stimulating discussion of corporate crisis communication practices and strategies.

## Intended Courses and Audience

This case can be used as a learning tool within the course outlines of Marketing, Business Law, Hospitality, and/or Crisis Management where the focus is on marketing concepts, including brand management; business management and the decision-making process; and franchisor-franchisee relations.

The current business issues presented in this case study will serve to effectively launch an active discussion involving the course topics by providing a learning experience for the audience. The material covered by this case study will be of benefit to undergraduate students discovering the successful components of a successful business and marketing plan through multiple viewpoints; and to graduate students assessing the significance of brand management and weighing in on the elements of managerial decision-making. In addition, this case study can be incorporated into the lesson plans of corporate training modules that specifically target hospitality professionals looking for more insight into marketing within the realm of franchising; program decision makers seeking a better understanding of marketing regulations and why legal protection is needed; and entrepreneurs learning the importance of ethical dilemmas and the consequences in making ethical business decisions. The level of discussion and critical analysis will largely vary depending on the audience involved.

As noted, the level of analysis will largely depend on the students involved. The following provides strategies that the instructor can use to initiate feedback from the various levels of the intended audience.

**1. Undergraduate students.** When working with undergraduate students, the instructor should solicit information pertaining to the theoretical concepts involved in the case, such as the evolution of the Uniform Franchise Offering Circular (UFOC) to the Franchise Disclosure Document (FDD). Ask the students to identify course material and how it is used within the case.

**2. Graduate students.** Instructors should require graduate students to do additional independent research regarding similar cases supporting each side and ruling against either side. Suggested cases include: (1) Hall v. Burger King Corp in which the franchisee stopped paying royalties, resulting in the termination of trademark use; (2) McDonald's v. Robertson in which the franchisor had to provide evidence that trademark infringement had occurred and the contract was terminated properly; and (3) Pappan v. Hardees Food Systems Inc. in which the right to an injunction is examined (Wilson 2003).

**3. Training module students**. Professionals enrolled in training modules should be able to identify precautions that can be taken to avoid crisis situations. The instructor can help to point out clauses within the franchise agreement to spark the debate on legal issues within the case.

## Teaching Approach

It is recommended that all of the following subject areas be examined; however, given the versatility of this case study, each topic can be discussed in isolation if deemed appropriate. Discussion triggers, including associated theories, are detailed below.

**1. Marketing.** The purpose of this case study is to pinpoint the importance of having a solid marketing strategy in place in order to eliminate questionable grey areas with franchisees. Identifying appropriate examples for each of the seven Ps of marketing will significantly reduce negative publicity associated with the brand's image.

**2. Business Law.** The legal component to this case study serves as the vehicle by which the brand management issue is brought to light. Discuss the importance and significance of legal documents, including Franchise Disclosure Documents and Franchise Agreements. What loopholes, if any, exist that can be identify in favor of the franchisee? Review the related case documents and discuss the key points addressed by the plaintiff and the defendant. What are the consequences if the plaintiff wins? What are the consequences if the defendant wins?

**3. Hospitality.** This case study thoroughly examines the delicate relationship between a franchisor and a franchisee. Though the noted franchise may have only regional recognition, the foundation of franchise agreements can be discussed, bringing to light the importance of brand management. The direction of discussions under this subject can include (1) how the actions of one franchisee can negatively affect the entire franchise system; (2) how franchisors should effectively address brand integrity cases; and (3) how brand management influences franchisor-franchisee relationships.

**4. Crisis Management.** This case study serves as a learning tool for examining corporate crisis management. Discussions can include different types of crises, how to prevent crises, and how to manage crises. Depending on the audience involved, talking points that include the benefits of the crisis identified could provide a higher level of analysis.

The design of this case study lends itself as a learning instrument to stimulate discussions. Knowing that it is not enough to simply teach generic principles and concepts, educators can utilize this study tool and its associated learning objectives to assist students with critically evaluating professional practices in a simulated setting. Building on the discussion questions laid out in the case study, the following provides a guideline to balancing theory with practice.

**1. What are the advantages and disadvantages of joint promotions?**

Naturally, there are advantages and disadvantages associated with any business decision especially when it relates to marketing and its direct relationship with consumers. Joint marketing strategies usually involve two or more brands or companies joining forces in a partnered promotion in order to promote their products, expand the impact of their services, and benefit from cost-sharing activities. Businesses consider joint promotions because of the advantages associated with them, including potentially increasing the customer base by quickly targeting consumers that may not be familiar with one of the products involved; decreasing marketing costs; and enhancing the attractiveness of the brands to consumers. However, disadvantages from joint marketing strategies can also be realized when a symbiotic relationship is created between the companies that dilutes the image of one or both brands involved.

**2. Describe the impacts that the promotion and the legal cases have on Capriotti's brand management?**

There are certainly negative and positive impacts on the Capriotti's brand related to the promotion and the legal cases surrounding the series of events stemming from the trademark marketing. Benefits to the brand could involve strengthening consumer loyalty as a result of supporting the company and its mission to stand behind their family-friendly core values. On the other hand, the negative impacts could be more substantial, ranging from a significant decline in the company's overall reputation to decreased consumer confidence in the perceived value of the brand.

**3. 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.**

The actions taken by Capriotti's, thus far, are understandable from a business point-of-view in protecting the image of its brand. In fact, the purpose of the franchise agreement is to safeguard the brand integrity. Without such legal documents in place, franchisees have executive decision rights to use a company's trademarks as deemed necessary in order to obtain profits with complete disregard to any potential harm to the reputation and image of the brand.

In the case of Capriotti's, the franchisee allegedly took unauthorized liberties with a potentially innovative marketing campaign. However, these actions could have negative repercussions seen in the form of lost business as a result of upsetting consumers who choose not to patronize businesses associated with adult entertainment establishments. Damage to the Capriotti's brand has yet to be determined, but this is not a "wait and see" game. Capriotti's must take immediate steps to protect the family-friendly reputation of its brand.

**4. 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?**

Given how fresh this case is, it is unknown at this time if Capriotti's brand image has been negatively affected by the unauthorized promotion. However, Capriotti's cannot afford to wait to see if damage as occurred. Instead, it must immediately begin crisis management efforts to protect the value of the brand.

Capriotti's, like most companies, is likely to respond to the symptoms of the crisis rather than the causes, that is until well after the fact. This is evident by the fact that Capriotti's was unaware of the issue until complaints surfaced by customers and other franchisees. Management responded to this symptom by ultimately delivering a notice of termination to the franchisee in question.

Communication at any step within crisis management is critical. In addition, Capriotti's should remain proactive in caring for and defending its brand. The company should conduct family-friendly PR campaigns to re-establish goodwill, shaping consumers' perceptions of the business to ensure positive value and worth. Capriotti's should not seek traditional marketing techniques, such as relying on apology ads, but rather establish a social media campaign that focuses on immediate dissemination of communication. Through the use of social media, Capriotti's should thank its cult-like followers, incentivizing them to continue their loyal support.

Negative stories will likely continue to circulate. It is important for Capriotti's to monitor the ongoing buzz and address it as needed. In the end, Capriotti's will need to revisit the cause of the crisis which traces back to the franchise agreement.

**5. 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.**

Royalty fees will inevitably rise through the life of a franchise. As a direct result, franchisees need to take matters into their own hands to create additional sales, revenues and, ultimately, profits in order to survive. Take into account a shrinking profit margin coupled with a market saturated with competitors, it is essential for franchisees to not work harder, but work smarter.

First, let's address the market. It is Las Vegas – Entertainment Capital of the World – and within the confines of entertainment likes gentlemen's clubs. This is Sin City. So, why would any business ignore this market? Don't patrons of strip clubs have to eat, too? So, then, why not seize the opportunity.

This joint promotion was simply put: innovative. By joining forces with an adult entertainment establishment, the franchisee was capitalizing on a captive audience, patrons of another business in another industry. With exclusive rights to sell Capriotti's sandwiches inside the strip club, the franchisee comes out ahead in sales and visibility.

## Teaching Strategy

Case studies, including this one, can be used in a variety of teaching methods. The choice of how to use this case study is up to the instructor(s) and is based on the resources available, the time allotted, and the nature of the class, the course material, and the students involved. It is important to note that this case study would not be recommended for teaching by distance education unless it is being utilized as a self-study assignment or an exam. This case study requires considerable interpretation and is best used under the following teaching methods.

**1. Class Discussion.** This case is more useful as a basis for in-class discussion. A debate between students can create alternative view-points that others may not have considered. The nature of the case and the suggested discussion questions can elicit strong views and active discussion among the students. In order to avoid group-think situations, the instructor may serve to act as devil's advocate to address the potential issues that the students are not considering. The case may be presented to students as a preparatory assignment in advance of an in-class discussion or as an on-the-spot task in order to mirror a real-life situation. The discussion can involve the class as a whole, or through the use of small, break-out groups that have each analyzed the case and report their assessment to the larger group. Alternatively, the instructor can simulate a debate by dividing the students into teams of two, a team of franchisees (or the law team for the franchisee) and a team of franchisors (or the law team representing the franchisor).

**2. Role Play.** The instructor may wish to use this case study as a learning device for role playing. For example, students may be assigned to represent a character within the case. As part of their role, they must present the concerns and viewpoints of their character to the class. Some roles to consider include the character of the franchisee, the franchisor, the consumer, and the associated lawyers. A discussion and analysis of the issues can either ensue during or as a class-review at the conclusion of the role-playing activity

**3. Interviews.** Students will serve as actors within the confines of the case and present the information through interviews with their peers. The material may only be presented with part of the information and students must then ask thought-provoking questions to extract the rest of the data needed to provide a thorough analysis and recommended course of action.

**4. Assignments.** The instructor could designate this case study as an assignment. Students could simply address the discussion questions in a paper from which an in-class debate could follow. Or, students could be assigned to provide supplemental material to the case study as a group project, supporting one side or the other through the means of presentations, video clips, and/or mock debates. Alternatively, the case study can be part of an examination, requiring immediate response by defining the issues within the case and preparing a course of action.

Regardless of the teaching method used, the instructor can enhance the learning activity through the use of a supplemental PowerPoint presentation, expanding on the different aspects of the case. In addition, a board plan can be used to capture key points and issues that surfaced during the discussion, role playing, interviews, or assignments.

## Wrap-up Points

Instructors should guide the students in addressing the underlying problems identified in the case. Lastly, it is recommended that instructors restate the key themes of the discussion while placing an emphasis on the choices made by the franchisee and on the decision-making process of the franchisor in order to solidify the learning objectives of this case study.

## References


Capriotti's Sandwich Shop, Inc. (2011). Franchise Disclosure Document. CSSI.062011.FDD.MD/VA.

Capriotti's Sandwich Shop, Inc. v. Taylor Family Holdings, Inc., C.A. No. 12-28-SLR (D. Del. Apr. 25, 2012). Http://www.ded.uscourts.gov/sites/default/files/opinions/slr/2012/april/12-28.pdf. [Accessed the 3rd of July 2012].

Daily Fiasco (2011). Capriotti Strippers [Digital Image, Adapted from the movie, Closer]. Daily Fiasco. Http://dailyfiasco.com/2011/11/17/capriottis-takes-it-off/. [Accessed the 16th of February 2012].

Feldberg, S. (2011). Bobbies, boobs and famous Brooklyn pizza. Las Vegas Weekly. Http://www.lasvegasweekly.com/news/2011/nov/15/bobbies-boobs-and-famous-brooklyn-pizza/. [Accessed the 24th of February 2012].

Handley, M. (2009). Capriotti's ready to talk turkey in aggressive expansion push. Nation's Restaurant News, 43(37), 73-74.

Herman, M. (2011). Be Wary of Franchise Churning. Blue MauMau. Http://www.bluemaumau.org/be_wary_franchise_churning. [Accessed the 5th of April 2012].

Jennings, L. (2012). Capriotti's promotes Patrick Walls to president. Nation's Restaurant News. Http://nrn.com/article/capriotti%E2%80%99s-promotes-patrick-walls-president. [Accessed the 29th of February 2012].

Lanham Act, 15 USCS Sections, 1051-1130.

Lopardi, M. (2012). Delaware Court Hears Case of Strip Club Sandwich Dispute. Http://www.wboc.com/story/16559460/delaware-court-hears-case-of-strip-club-sandwich-dispute. [Accessed the 24th of February 2012].

McCabe-Joy, C. (2011). Ready for lunch? Head over to Crazy Horse III & enjoy a Capriotti's sandwich!. I Love Las Vegas Magazine Blog. Http://ilovelasvegasmagazine.blogspot.com/2011/11/ready-for-lunch-head-over-to-crazy.html. [Accessed the 7th of September 2012].

O'Reiley, T. (2012). Hold the onions? Dispute simmers over sandwiches ordered for strip joint. Las Vegas Review-Journal. Http://www.lvrj.com/business/hold-the-onion-dispute-flares-over-sandwiches-ordered-for-strip-joint-137676563.html. [Accessed the 29th of February 2012].

Scavone, J. (2011). Capriotti's Takes It Off. Daily Fiasco. Http://dailyfiasco.com/2011/11/17/capriottis-takes-it-off/. [Accessed the 29th of February 2012].

Smith, H. (2012). Franchising the future. Las Vegas Business Press. Http://www.lvbusinesspress.com/articles/2012/02/27/news/iq_51350504.txt. [Accessed the 28th of February 2012].

Stapp, T. (2010). No Ordinary Hero. Entrepreneur. Http://www.entrepreneur.com/article/205504. [Accessed the 24th of February 2012].

Taylor Family Holdings, Inc. v. Capriotti's Sandwich Shop, Inc., No. 7177 (Del. Ch. 2012). Http://www.courthousenews.com/2012/01/24/Capriotti2.pdf. [Accessed the 29th of February 2012].

Wilson, R. H. (2003). Hotel Franchise Termination: Preliminary Injunctions Protect Unlawful Trademark Use. Journal of Hospitality Financial Management, 11(1), 47-54.