Franchise owners thought they'd make a fortune serving the toasted sandwiches created by Quiznos. Instead, they got burned.

By Jessica Centers
Published: May 3, 2007, Denver Westword

The Classic Italian sub is a glorious mountain of salami, pepperoni, capicola, ham and mozzarella piled high between two thick slices of fresh-baked bread. The cheese is soft and gooey, and the bread's corners have a perfect, light crunch. Mmm, mmm, toasty.

Toasted bread wasn't enough to keep Ratty Baber, Chris Bray and Bob Baber from struggling with their franchises.

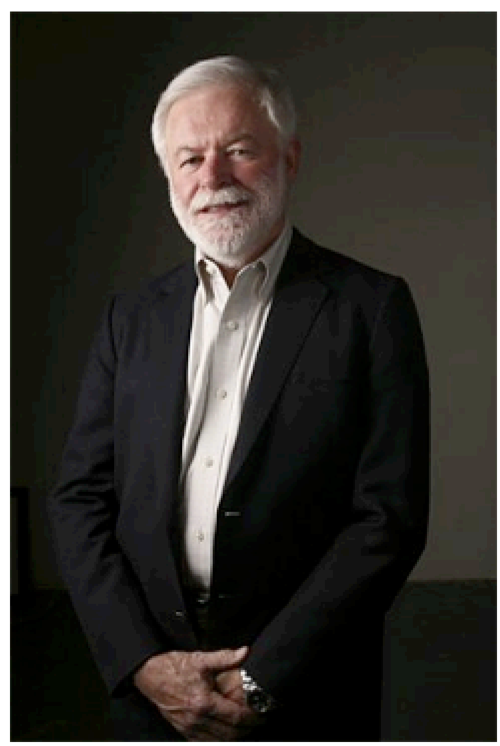
Anthony Camera

The Classic Italian has been on the Quiznos menu since the first store opened in 1981, on the corner of 13th Avenue and Grant Street. It has lasted as a customer favorite through ownership changes, the company going public, the company going private again, bizarre ad campaigns featuring spongmonkeys and a human suckling on a wolf, upwards of 5,000 grand openings, and new sandwich creations such as the recent Prime Rib on Garlic Bread.

"The important thing about Quiznos is, it really is a great sandwich," says Sherri Daye Scott, editor of the quick-service-restaurant trade publication *QSR Magazine*. "They have an amazing culinary team over there.

"They position themselves as hearty, well worth the money, bigger, more meat and more choices that other places don't have," she adds. "Among the sandwich kings, they did the best job of knowing what customers are looking for as far as taste trends, with meat, cheeses and breads."

But not at knowing how to appease franchisees. The Denver company is currently embroiled in a spate of lawsuits filed by the very same people it licenses to serve customers the tastiest, toastiest Classic Italians.



Attorney Ted Bendelow represented Quiznos franchisees.

Chris Bray was politely defiant. Testifying before U.S. District Judge John Kane in his courtroom on the eighth floor of Denver's Alfred A. Arraj United States Courthouse in February, the Texan chose his words carefully.

Bray has been a Quiznos franchise owner for ten years. He opened his first store near Fort Hood, Texas, in 1997, when only a few hundred of the sub shops existed around the country. In December 2001, he and a handful of other owners founded the Toasted Subs Franchisee Association because the chain had begun implementing policies they considered deceptive, like taking away their oversight of how advertising dollars were being spent and forcing them to sign more expensive service contracts that earned the corporation kickbacks from the providers. The group started a website where franchisees could commiserate and tried to use the organization to negotiate changes within the company.

Quiznos started filing disparagement lawsuits against Bray and others who had posted comments on the website forum. The TSFA, meanwhile, began recruiting potential plaintiffs who were willing to pay into a legal fund, and they enlisted the help of a prominent franchise attorney.

On November, 20, 2006, the group filed its first class-action lawsuit in Wisconsin, alleging racketeering and charging Quiznos with setting up an illegal business model by which the corporation makes its profits off of franchise fees and products it forces franchisees to buy. A few days after the complaint was filed, a franchisee in California walked into a Quiznos restroom and shot himself three times in the chest.

The original Quiznos, founded in a former gas station in Capitol Hill.

Bhupinder "Bob" Baber left a note to the media calling his suicide a sacrifice. Bray, a friend of Baber's, posted the letter on the TSFA website; within a week, Quiznos terminated franchisee agreements with every boardmember of the TSFA. Their stores would close, and the hundreds of thousands of dollars they'd invested would be lost.

That decision was made by Patrick Meyers, Quiznos chief legal officer at the time and general counsel since 1997. He testified to Judge Kane that the company's relationship with Chris Bray and the TSFA had been acrimonious in recent years, but it wasn't until he read the suicide note on the TSFA website that he decided to close their stores. "Mr. Baber's suicide note was completely different," he said in court. "It was, first of all, playing on a tragedy of a man killing himself. It was exploitive, accusing our brand of horrible things. That posting was nothing but to directly attack us. To me, it was black and white."

Michael Daigle, executive vice president for development, also testified that he was outraged by the suicide note's posting. "It was pretty distasteful to capitalize on that tragedy," he said. "The message was 'Don't become a Quiznos franchisee, because you'll end up killing yourself.'"

Bray and the others did not walk away quietly. They filed a complaint asking the U.S. District Court in Denver to stop Quiznos from taking their stores, arguing that their First Amendment rights had been violated. Five of those eight plaintiffs settled with Quiznos, with two more claiming that they had played no role in the decision to post the suicide note. That left Bray to explain to Judge Kane why he made the suicide note public. And that's fine with him. For Bray -- a man who lists fighting corporate injustice among his hobbies -- this is a matter of principle. On the stand in Denver, Bray told the court he posted the suicide note because Baber's wife, Ratty, asked him to -- and because a lot of TSFA members agreed with Baber's sentiments.

Quiznos attorney Fredric "Ric" Cohen objected to the answer, but Kane overruled him.

When it was his turn to cross-examine Bray, Cohen came armed with a stack of depositions and exhibits. "You read the suicide note before you posted it on the TSFA website," asked Cohen, then an attorney with DLA Piper US in Chicago. "Before posting it you took no effort to verify its content?"

"That is incorrect," Bray replied.

"Turn to your deposition. Page 144, line 22. 'Question: Apart from your experiences, did you do anything to investigate or otherwise determine the accuracy of any of the statements in Mr. Baber's suicide note? Answer: No.' Do you recall giving that answer?"

"I do, but I don't think that's the question you asked me."

The men continued sparring over the suicide note before the questioning finally got around to Bray's stores, the actual purpose of the hearing. Kane was to decide whether or not to grant plaintiffs a preliminary injunction, thus preventing Quiznos from shutting them down during the course of the litigation.

Three months later, Kane has yet to rule on the February hearing, and Meyers is no longer the company's chief legal officer. Quiznos has a new CEO, who came on after Baber's suicide and the TSFA terminations, and he's replaced some of the company's longtime leaders, including Meyers. And even as the new corporate management works on repairing franchisee relations, the TSFA is gaining momentum. It now has class actions pending in Michigan and Illinois as well as Wisconsin, and claims a membership of 500 -- 10 percent of all Quiznos stores.

Jimmy Lambatos, the chef behind the Classic Italian and other original Quiznos specialties, moved to Colorado from New York with his parents in 1970. He was going to college to keep from getting drafted when he took a job at the Colorado Mine Company restaurant in Glendale, where he fell in love with the food business. When the chefs walked out one night, Lambatos was baptized by fire. He became the chef and, later, the manager. By the time he left, he was ready to open his own restaurant. "I thought there was a huge need at the time for Denver to step up to their culinary aspirations," he says.

Lambatos partnered with Todd Disner, and in 1978 they opened Footers, a trendy, whitewashed, New York-style Italian joint, in Capitol Hill.

A couple of years later, Disner leased a former gas station he owned at the corner of 13th Avenue and Grant Street to a group wanting to open a submarine sandwich shop. Lambatos watched the new place struggle and quickly go out of business. "It didn't take off 'cause it was your standard sandwich," Lambatos says. "It was more of a Subway thing. Soft bread instead of crusty bread. It wasn't a New York, East Coast-style sandwich where you had a lot of flavors in the thing."

Lambatos knew he could do a better sandwich, like the ones back home. Sandwiches that came out of a pizza oven dripping with cheese and olive oil. "One of the first things I learned is that if you put anything in the oven, it's going to taste a whole lot better," he says. "Flavors seem to come out of food when they're heated up."

He ran with the idea, and in 1981, Lambatos and Disner opened the first Quiznos (so named because they liked the letters Q and Z). The tasty toasted sandwiches, with their generous layers of meat and cheese, were an instant success. So much so that a group of waiters at Footers wanted in on the concept; the owners agreed to let them open a second Quiznos in Boulder. "It, too, was an instant success, and my partner thought we needed to start franchising these things," Lambatos says. "And lo and behold, before 1985 we had fourteen stores."

But even as the sandwiches' popularity was growing, the business itself was falling apart. The franchise contracts hadn't been crafted tightly enough, and there weren't enough royalties coming in to support the money being paid out on advertising. Disner and Lambatos decided to split in 1988.

Lambatos got Footers Catering, which he still owns and runs today. Disner took Footers, which he subsequently closed, and the Quiznos stores. In 1991, Disner sold Quiznos to Rick Schaden, who had opened three franchises after graduating from the University of Colorado, and his father, Dick Schaden, a prominent aviation attorney who made his money suing airlines after plane crashes.

The Schadens took the company public in 1994, and the concept -- centered around a hearty sandwich made with the highest-quality ingredients -- continued to grow quietly. (Requests to interview company officials for this story were declined through press-relations contact Jessica Beffa; she refused to answer any questions, including those regarding the Quiznos product, franchisee relations, the company's growth or litigation. "It is not appropriate for us to address these questions at this time," Beffa explained via e-mail.)

When, in late 2001, the Schadens took the company private once again, some bought-out shareholders questioned the amount paid per share. In 2002, Denver attorney Jay Horowitz, on behalf of Texas investor William Fagan, claimed in Denver District Court that the Schadens had cheated the company's public shareholders out of millions.

The resulting trial, involving several shareholders, revealed Quiznos to be an extraordinarily successful endeavor that had grown from forty stores and $14.2 million in annual sales in 1994 to 1,400 stores and $428 million in 2001, and that neither the market nor the company's own stockholders had been aware of the restaurant's strength or prospects. Horowitz alleged that was because the Schadens wanted to buy the company back before the stockholders could realize its value.

Starting in December 1998, Horowitz argued, the Schadens spent millions of dollars of the company's funds -- money generated by the public's investment -- to retain investment banks, financial consultants and lawyers to craft a private takeover. Then, in 2001, they proposed a merger in which they would buy the remaining Quiznos stock at its market value of $8.50 a share. They didn't put out an offer to see what other investors would pay for the company, and they refused Fagan's offer to buy Quiznos at $15 a share. They did, as required by federal securities law, send stockholders a proxy statement explaining the transaction.

Missing from that November 5, 2001, notice, however, were many telling details. For instance, a projection for store sales and openings in future years failed to acknowledge that the company had already exceeded those numbers. There was also no mention of an upcoming Super Bowl sponsorship and commercial. Nor did the document explain that Quiznos was selling all of its corporate stores in favor of franchisee-owned stores, thus eliminating the up-front risks by requiring individual owners to pay capital costs. Most significant, the statement did not disclose plans for a food subsidiary that was expected to generate $15 million in annual profits as soon as 2002.

Instead of simply licensing suppliers as the company had done in the past, American Food Distributors would now purchase Quiznos products and sell them to franchisees at a markup. In 2002, AFD alone generated a $20 million profit.

On January 8, 2004, after 24 days of testimony, Judge Robert McGahey Jr. ruled that the fair value of each share was $32.50. He awarded the stockholders the $24 difference per share, plus interest and attorneys' fees. "The 'true status' of Quizno's as a company on the verge of a growth explosion was obviously known to the Schadens," McGahey wrote in his judgment, "but they told other shareholders little, if anything, of substance concerning that potential growth explosion.... I find the proxy statement to have been an exercise in obfuscation."

Suits from other bought-out shareholders, and the Schadens' ex-wives, soon followed.

By the time that ruling came in 2004, the chain had surpassed 2,500 stores, and Lambatos, who stayed friendly with Rick Schaden after selling out, had been present for many of the openings. He'd even been the official face of Quiznos.

In 2002, the company's ad agency was looking for a spokesperson who could sell their toasted subs, and after seeing footage of Lambatos catering a cocktail party, executives decided he was the ideal Chef Jimmy, a character so obsessed with creating the perfect sandwich that he let everything else in his life go -- including his pants. The first spot aired on national television during the 2003 Super Bowl.

Lambatos relished his time in the spotlight and spent the next year traveling to store openings, making appearances and promoting the brand. "That's when I realized what Rick had done with the franchise over the course of the fifteen years I'd been away from it," he says. "Looking back on it now, I don't think I could have done what he had done. His business savvy and what he wanted to do with the company was so on track, with producing the best sandwich you could possibly eat and doing it with better quality products than anybody else in the market, and in that time frame of the '80s and '90s, when people were looking for fresher, better-quality products." By late 2003, the Chef Jimmy ads were replaced by new spokespeople -- and creatures (see story, page 19). Lambatos went back to admiring the sandwich chain from afar while he ran his own business, stopping in at Quiznos for a Classic Italian a few times a month.

Quiznos was receiving national industry recognition, and by 2004, it had been ranked three years in a row by *Nation's Restaurant News* as the fastest-growing restaurant chain in the country, both in number of stores and sales. In 2005, Quiznos was number two on *Entrepreneur Magazine*'s Top 10 Franchises list, and *QSR Magazine* ranked Quiznos third in its list of Top 50 Chains, for its increase in sales. Last year, Quiznos was still the fastest-growing restaurant chain in number of stores.

These distinctions -- noted in the company's marketing materials -- are not aimed at wooing customers, but potential franchisees: "Hungry to Be Your Own Boss? It's Easier Than You Think..."

An online seminar -- the first step toward becoming your own boss -- plays like an infomercial promising financial freedom after an initial investment of approximately $279,500. That includes a $25,000 franchise fee to Quiznos, plus all start-up expenses -- from advertising and training to equipment and construction -- paid to approved suppliers or affiliates.

"You don't have to be highly skilled or highly educated."

"Ever made a sandwich? You're qualified to own a Quiznos."

"We'll support you every step of the way."

"You are never alone."

"We want you to succeed."

"The American dream is owning your own Quiznos."

Until recently, required reading for new franchisees brought home that point. *McDonald's: Behind the Arches*, by John F. Love, tells the American success story of McDonald's and Ray Kroc, who bought the burger joint from the McDonald brothers and grew it into the most successful franchise ever. He created a lot of millionaire owners along the way.

Kroc called the other growing fast-food chains of the 1950s "franchising rackets." His competitors made a sizable chunk of their profits by selling marked-up products and equipment to their franchisees. Kroc dictated suppliers in order to obtain system-wide price breaks, but instead of accepting kickbacks from those suppliers -- which was a common practice at the time -- the entire price break was passed directly to the franchisees. Kroc charged a $950 initial franchise fee and took just 1.9 percent of stores' sales as royalties, compared to the 7 percent that Quiznos takes, plus 5 percent for advertising and marketing.

"In short, while other franchisers were figuring out ways to pad their bottom line, McDonald's was concentrating on ways to pad its top line -- the total revenues of all franchised restaurants in the McDonald's System," Love writes.

"The essence of Kroc's unique but amazingly simple franchising philosophy was that a franchising company should not live off the sweat of its franchisees, but should succeed by helping its franchisees succeed...," the book continues. "In the end, the genius of Ray Kroc was that he treated his franchisees as equal partners. He was but one of dozens to see the mind-boggling potential of quick-service restaurants, but he had something no one else had -- franchisees working on his side."

Reading *McDonald's: Behind the Arches* got Quiznos franchisees excited for the future. Quiznos corporate was on their side. Their success meant Quiznos' success.

"When I read it, I'm thinking this is what Quiznos is modeling themselves after," says a Colorado franchisee who signed on in 2001. "I was all hyped up. I thought this was going to be a good thing.

"Couple of years later, they stopped requiring you read that book."

Bob and Ratty Baber signed their first contract with Quiznos in 1998 for a restaurant in Long Beach, California. From the start, they had problems. They claimed that they were coerced into buying a second location as a condition of opening the first, and that they were promised -- before signing contracts -- that Quiznos would not open restaurants within two miles of their stores. When that promise was broken in 2004, Baber's sales dropped dramatically. He claimed he was not provided any assistance from the company after numerous requests.

He had paid Quiznos $35,000 in franchisee fees and sunk his life savings -- $500,000 -- into the two stores. His wife had been working fifty- to sixty-hour weeks at the restaurants, without any compensation, for six years while raising their three children and caring for her sick mother. He had to do something.

By the end of the year, Baber decided to create an association similar to the TSFA for California franchisees. He and his wife flew to Texas to meet Chris Bray and solicit his advice. Baber wanted to organize a group that could lobby for legislation to protect the rights of franchisees in his state. In December 2004, the Quiznos Franchisee Association was formed, and Baber began recruiting members. He tried passing out notices about the new association at a regional meeting of Quiznos franchisees and was confronted by a member of corporate management.

On March 31, 2005, Quiznos sent Baber notices terminating both of his franchises. According to Quiznos, Baber's stores had failed numerous corporate inspections, and customers had called in 23 complaints during the fifteen months prior to the notice. Baber filed suit in a California court in April to keep his stores open, alleging that he was being retaliated against for organizing, and claiming fraud against Quiznos. A litany of lawsuits and countersuits followed over the next nineteen months. Baber fought to keep the litigation in California courts while Quiznos filed claims in Denver, as its contract with franchisees demands. Baber argued that traveling for litigation would cost him his job, which was the family's sole source of income. Baber was out of money, having spent $100,000 on the litigation. He feared that losing in court would cost him the house that he and his family had lived in for eighteen years.

On October 31, the California Court of Appeals ruled that Baber's claims would be arbitrated in Denver.

On November 27, Baber walked into a Quiznos restaurant in Whittier, California, ordered a soda and talked with the manager before excusing himself to use the restroom. There he shot himself three times in the chest. When police arrived at the scene, they found a letter to the media with Baber's body. There was a paper copy and a disc.

I am not a fool. My wife is not a fool...

We trusted in Quiznos. They promised us success, help and everything else to get us to buy into the "dream" they were selling...

We are like so many others who also bought into this dream and lost a substantial portion of their life's savings...

I have struggled hard and did the best I could to create a voice for the franchisees in the system and to create a "support system" for the franchisees, which does not exist, and to fight the injustices of this franchise system. Not to bring the system down, but only to make it fair.

I hope my efforts will not go wasted. I hope the government will look into the systematic deceitful business practices of this franchisor. A serious investigation must be undertaken.

It's been a tough battle.

I have been dragged through the legal system for over 18 months by the immensely superior financial might of the franchisor, which will continue to keep justice from coming to me, and to the hundreds and thousands of franchisees who are trapped similarly in the system and are slaving for the franchisor, and those who have bought into the franchise agreement, and not yet become store operators.

I have spent and sacrificed my time, money, family life. I thought of an option to leave the system quietly and fade away, but now I choose not to do that, and instead let the struggle go on.

My struggle will continue after my sacrifice...

Quiznos has killed me. Destroyed my life. Destroyed my family life for the past seven years...

They retaliated against me for trying to create a voice for the franchisees in the system...

How can a common individual like me and those like me in similar circumstances, there are thousands, with limited resources get justice?

I believe there will be justice. But it will be too late for me.

There are a large and growing number of us who believe, unreservedly, that the handful of people who own and/or otherwise control the Quiznos Corporation should spend the rest of their lives in prison. The Quiznos Corporation is just one of the most egregious in what they do, but the entirety of franchising in America is open to this kind of abuse.... STAY FAR, FAR AWAY FROM THE QUIZNOS CORPORATION. THEY ARE CRIMINAL IN WHAT THEY DO. And treat any Franchise System with deep suspicion.

No one has proved Baber's accusations to be true. No criminal investigation or charges resulted from his note. Yet his words still haunt Quiznos. At the hearing on the TSFA boardmembers' terminations, the company's executive vice president for development, Michael Daigle, testified before Judge John Kane that selling stores has been difficult since the note was posted on the website. Morale is low. People are using the suicide as a reason to back out of purchasing franchises. Landlords are tough to deal with. Lenders are getting tough to deal with.

"I get a lot of comments from landlords and lenders about having seen the TSFA website," he said. "One potential franchisee was going to buy an existing franchise and backed out, citing the suicide note as a reason."

Susan Kezios, president of the American Franchisee Association, helped create the TSFA. She feels that there is a lot at stake for franchisees in Bray's case. "Certain franchisors like their franchisees to be kept stupid. Divide and conquer. Keep them in the dark. Some franchisors do threaten franchisees who form associations. There is no level playing field, so right from the beginning, a franchisee is at a disadvantage. There's a very spotty, limited protection for franchisees. And that is why an association is so important.

"It's a freedom-of-speech issue, and it will be interesting to see what side the court comes down on -- if [Quiznos] can shut down negative public comment. And it wasn't even negative public comment. Bob Baber wrote that suicide note. He wanted journalists to pick this up."

New Jersey attorney Justin Klein sits down for a beer after a day in Judge Kane's Denver courtroom, remarking that almost every business along the 16th Street Mall is a franchise. He's sued a few of them. He and his partner represent disgruntled franchisees, and have taken on 7-Eleven, Cold Stone Creamery, Dunkin' Donuts and Snap-on Tools, to name a few. He suspects he'd have a lot fewer clients if people had a better understanding of franchising before they entered into agreements.

The system started in this country after the Civil War as a way for Singer Sewing Machines to get its product to market. It spread in the early 1900s with car manufacturers franchising to dealers and soft drink companies to bottlers. Today there are at least 650,000 individual franchise businesses in the United States in seventy industries. What began as a simple method of distribution -- attractive to franchise owners because they got to sell an already proven product, and attractive to companies because franchise owners shouldered the risk in getting that product out to new customers -- has grown far more complex.

Ironclad contracts dictate every detail of how a franchise business is to be run, and franchisees give up the freedom to make decisions about their business in exchange for the training, support and marketing that they purchase with an initial franchise fee and continued payment of royalties. In theory, buying into an established chain is supposed to be less risky than starting a business from scratch. However, a comprehensive independent analysis done by Timothy Bates of Wayne State University found that ten years ago, when the study was performed, 38 percent of franchise units failed in four years compared to 32 percent of independent start-ups.

Janet Sparks -- a columnist based in Highlands Ranch who writes for *Franchise Times* and bluemaumau.org -- has been following the sector for fifteen years. She sees the risks for franchisees becoming greater, with more abuses and less regulation now than ever. "I truly think it's getting worse," she says. "Franchisors are getting away with too much. They are not regulated. The FTC turns a blind eye to fraud. Something needs to be done now. So many people are losing so much."

While regulation remains scant, it's up to lawyers like Klein to take on franchisors for bad business practices. To that end, Klein is the legal counsel for the Toasted Subs Franchisee Association and the man behind the class actions in Wisconsin, Michigan and Illinois -- with more to come. He's far from the first or only lawyer to sue Quiznos, but Klein is confident that his barrage of lawsuits will reveal the Quiznos business model as a racket.

Klein became aware of Quiznos a few years ago, when the sub shops started popping up around New Jersey. Then in 2005, a man came into his office saying he'd bought a Quiznos franchise about three years earlier and still didn't have a location. Klein asked him how much he paid. He said he had paid an initial $25,000 franchise fee but couldn't find a site within the trade area he bought into.

"That doesn't sound right," Klein told him. "If they're doing something wrong, then there's got to be other people like you."

Within a few weeks, Klein had found 27 New Jersey franchisees that had bought into the company more than eighteen months earlier and still had no location; Quiznos was refusing to refund their $25,000. "I was astonished," Klein says. "So I filed a class action that basically said that Quiznos dupes people into thinking they are buying an area that can support a store and dupes people into thinking that they will be able to comply with their contractual obligation to open within twelve months, which is what they have to do under the [franchise] agreement. What Quiznos later discloses is that, sure, you have to open in twelve months, but it could take you twelve to eighteen months just to find a site."

(Quiznos last year disclosed that as of December 31, 2005, 2,940 franchisees had not opened stores within the allotted twelve-month time frame. They represent 67 percent of all franchisees waiting to open a store.)

After Klein filed his suit in New Jersey, the TSFA quickly caught wind of it and came looking for him. "Chris Bray starts to tell me about the operational problems within the Quiznos corporation, and I realize that $25,000 fee is like nothing compared to what's going on here," he says.

What was going on, Klein believed, was that starting in 2001, Quiznos had implemented a business strategy to extract millions from franchisees while simultaneously making it difficult, if not impossible, for them to turn a profit. "Our argument is they don't really care how many sandwiches they sell, because they don't make their money off of product you sell as a franchisee," Klein explains. "They make their money from the product that the franchisees purchase.

"Quiznos was requiring these people to buy products and services at inflated prices that were not related to the quality standard," he continues. "To say that you are required to buy cleaning supplies at a higher price than you can buy them from Sam's Club does not make sense, and that's what was going on according to Quiznos' own documents. They received well over $100 million in rebates every year off the backs of their franchisees, and that's a problem, especially when the franchisees are losing money the way they're losing money. And it seems every change the company makes is to benefit or line the pockets of the company."

According to Klein's complaint, Quiznos also saturates the market with stores, distributes coupons for free and discounted food for which franchisees receive no reimbursement, and uses a portion of the advertising fee it charges franchisees to sell more franchises instead of to promote their product.

When a franchise goes out of business, as many inevitably do, the owner is threatened with a lawsuit to pay royalties over the entire fifteen-year term of his contract. Quiznos offers to resolve that dispute if franchisees sign a waiver giving up their right to seek redress. The bankrupt, vacant store is then passed on to another prospective franchisee. "In this manner," Klein says, "Quiznos suffers no loss and only a short-term interruption in royalties, while also meeting their requirements to provide locations to their excessive backlog of franchisees."

Klein cites a 2003 court document from another case in which Quiznos attorney Ric Cohen stated that "40 percent of Quiznos units are not breaking even," -- a figure that was not disclosed to his clients before they signed into the company. "What happens with Quiznos franchisees now is that it's just a matter of time before their debt catches up to them, before they max out their credit cards and take out their second mortgages and ruin their lives and their family's lives and their family's family's lives, meaning in-laws and whomever else they can borrow money from to try to get it to work, because franchisors will tell you: 'If you just keep it open a little bit longer...'"

Fred Westerfield is a client who couldn't hold it together any longer. He's closed his three Wisconsin Quiznos stores and filed for bankruptcy. He and his wife are losing their home and cars and almost ended their twelve-year marriage.

"We had money we earned and invested," he says. "We were smart. I thought this was going to be a good investment. They classify people as bad operators. They can't say that about me. I won awards. I followed all the rules. I worked seventy-plus hours a week. I put my heart and soul into those stores."

So did Colorado franchisees Dan Walsh, Dan Serafin and Samir Tailor, who sued the company in 2004 for encroachment, claiming that their sales dropped dramatically when Quiznos allowed additional stores to open in close proximity to theirs. Since the company's contract with franchisees does not grant any territorial exclusivity -- the company can open stores as close to existing stores as it wants -- attorney Ted Bendelow argued that the issue was about economic viability. "The knowledge of the marketplace and what it takes to sustain a franchise is really within the unique and sole knowledge of the franchisor," he says. "That's where I think they have the greatest responsibility, not putting people into a situation where going in, you know there's trouble."

Denver District Court Judge R. Michael Mullins didn't agree and ruled for Quiznos, saying the plaintiffs had not proven that their reduced sales were caused by the proximity of other stores. More important, the plaintiffs' contract stated that site selection is their responsibility and that sites do not come with territorial protection. "In short, the Franchise Agreements are clear that Quizno's approval of a site was in no way a guarantee as to the sustainability of the location or as to its future success and also that Quizno's retained the right to open franchises anywhere else it chose," he wrote.

Walsh lost his two stores and his investment during the course of the litigation. He recently filed for bankruptcy. "Basically, you're signing away your life," he says today. "They made you believe they were going to take care of you. It turned out to be a crock."

Instead, Quiznos expects Walsh and other franchisees to adhere to the letter of their contracts, which require that they acknowledge the risk of owning a business and disregard any promise or assurance a Quiznos employee or contractor might have made. Bendelow, however, sees that as a problem because the Quiznos franchise agreement is an adhesion contract, meaning it's one-sided and non-negotiable. "The franchisee literally cannot change a comma or a period in the document," he says. "It was written by Quiznos for Quiznos, and so, as one might expect, the franchisor has all the rights, and the franchisee has all the responsibility. It doesn't do you any good to read the contract, because you can't negotiate it anyway. Here it is. Either you're in or you're out. You really go in with a leap of faith."

One-sided as the contract may be, Quiznos does disclose the dynamics of that relationship to franchisees in detail through its Uniform Franchise Offering Circular, which it files with the Federal Trade Commission and is required to show prospective franchisees. And while the document is a massive 437-page book, the UFOC discloses -- in all caps in the first two pages -- terms such as franchisors' right to open stores wherever they want, liability for future royalties if the agreement is terminated, and the company's ability to terminate an agreement if a franchisee does not open a store within twelve months. It also lists brief summaries of the forty lawsuits in which Quiznos is a defendant.

Outside of court, attorney Cohen recently released a statement that the claims in the Illinois class action are "false, misleading, and wholly without merit," and that Klein and Bray have "repeatedly demonstrated that they have little knowledge of the Quiznos business, or appreciation for its many successes."

The Colorado team for the Toasted Subs Franchisee Association are all carefully watching Chris Bray's lawsuit against Quiznos. It may determine whether or not they have a right to organize and to publicly criticize their franchisor.

When they meet at a Denver-area Quiznos on a recent afternoon, they talk in hushed tones with one eye on the front door. They talk about how to grow their numbers and how to get the rest of the one-third of Colorado franchisees who they say have already joined the TSFA to actually show up to meetings.

"The fact that we want a food co-op, that we want to fix our stores, that we want more say -- that should not be a secret," says the store's owner, who, like the other members, asked to remain anonymous for fear of retribution. "I don't want us to be against Quiznos, because we are Quiznos."

She hasn't made a profit on her store in years, not since another location opened nearby. Another owner in the room had sales well above average last year but still was in the red after food costs, royalties and discounts that aren't reimbursed. "And believe me, you guys," she says. "I run a tight P and L, and it's ugly."

She recently found out from the owner of a single, independent restaurant that his service calls from Pepsi are free. Yet they charge her $75 every time they come through the door -- money that she believes gets kicked back to Quiznos corporate. Those types of charges, and the tens of thousands in royalties she paid last year, are killing her; she'd like to get out of the system, but Quiznos stores aren't selling.

Most franchisees don't want to sell. They'd rather stick with the product and company they believed in enough to invest their savings. What they really want is a chance to be successful. They seek bargaining power through the recognition of an independent franchisee association and a business model that gives franchisees some oversight. Subway's franchisees, for example, after much dissent and litigation in the '90s, now have a recognized association and control their own food and advertising co-ops.

"What's funny is the owners that seem to be most perturbed about this thing are the owners with the highest-volume stores," says another Colorado franchisee. "I think it's because we run good stores. We're there and we're conscientious, and we realize how much we should be making. We're doing okay, but that's the top ten stores. The ones on the bottom..."

He shakes his head.

When he bought into Quiznos, in 2001, he'd been eating there since he was a student in Boulder and there were only two stores. He held out for a high-traffic location and was pleased with his sales from the start.

There were a few red flags. Design and construction took longer than it should have because he claims he couldn't get his area director to return his phone calls. All the support he'd been promised proved to be non-existent.

In the spring of 2003, not long after his opening, franchisees were invited to a conference in Las Vegas. It was soon after the Super Bowl commercial aired. Jay Leno gave a private show, and Rick Schaden gave out keys to new Mini Coopers to the best stores in the country. What stuck in the mind of franchisees was not all the hype and glitz, but something their CEO said. "Rick Schaden got up there and told everybody that one out of every three Quiznos was not making money," the Colorado franchisee recalls. "He just came out and told us that. One out of three Quiznos did not make money. I thought, 'My God, what did I get into here?'"

But he was making money, and he continued to do so. It was only late last year that he joined the TSFA, even though he had one of the most successful stores in the state and was someone the company had chosen to train dozens of franchise owners and corporate employees.

"It just slowly started building over the years to where you start seeing your profit-and-loss statements and thinking, 'Gee, I'm doing as good or better than last year. How come I'm not making as much?' You notice that food costs, paper costs and equipment have gone up. Everything we touch with these guys, the price goes up and a kickback goes to them. The general consensus now is that they make more money off the food [they sell to franchisees] than the royalties, and this was just coming to light to most people last year."

When he received a corporate e-mail to all Colorado franchisees, he kept the addresses. The chatter among owners had already begun when Quiznos decided to start selling gift cards last September. It was a bad deal for the franchisees because Chase was going to take 8 percent of each sale for administering the program. The fact that Chase was owned by JP Morgan -- which had just bought into Quiznos -- made franchisees wary that this was just another kickback scheme. They were made more skeptical by the reference -- in the contracts they were being asked to sign -- to a second agreement between Quiznos and Chase, which they were not permitted to review.

Some owners refused to sign, but Quiznos threatened them with a "default" if they didn't change their minds. Defaults are normally issued during regular inspections if something isn't up to par -- like food not being stored at the right temperature or an unclean shop; enough defaults can justify shutting down an owner. The gift-card holdouts acquiesced and signed the contract.

"That prompted a lot of people right there to go, 'Wait a minute,'" says the franchisee. "Isn't a default supposed to be about an unsafe practice or health issue? This was all about money. That was what prompted me personally to start taking some action. To me, that was the final abuse of their default system. How stupid do you think we are?"

"That's another thing. A lot of people that get into Quiznos are from other countries. They've saved all their money and put it into this. Their command of English isn't good, and they don't understand our legal system. I honestly think Quiznos is preying upon them. I just hope through some of these cases we'll set some precedent and change some of that. There's plenty of money for a franchisor to make. But when they get greedy like that, they have a way of wringing every dime out of the system. It's not even clever. It's just forceful."

Last year, the Schadens put Quiznos on the market with an asking price rumored to be as high as $2 billion. A few months later, JP Morgan bought an undisclosed stake in the private company. In January, Greg Brenneman was appointed the new president and CEO, and his company, TurnWorks, took an equity position in Quiznos. Rick Schaden stepped down as CEO, though he remains chairman of the board.

"Moving forward, our primary mission will be to relentlessly work on increasing restaurant profitability for our franchise owners," Brenneman said in a press release. The turnaround specialist is credited with fixing Continental Airlines and improving Burger King's relations with its franchisees before taking the company public last year.

Thus far, franchisees say Brenneman's appointment gives them hope for the future of their investments. He's already said publicly that food costs, as a percentage of revenue, are out of line. He's promised to cut back on coupons and has lowered prices on some supplies. He leaves a weekly voicemail to all owners that is like a pep talk -- updating them on progress and always reiterating that he's proud to be on their team. "As a reminder," he said in a recent message, "everyone at Quiznos corporate is compensated on franchise owner profitability."

Ron DiSaverio owns two Quiznos in downtown Denver and one in Golden. He's been in the system for more than twenty years. "I've got nothing bad to say about Quiznos," he says. "I'm still a big believer in the chain."

Rich Medina, a Denver franchisee whose smiling face is pictured in Quiznos ads and marketing materials beside a quote about how the company has changed his life for the better, says that he's not been thrilled with the company, but neither is he completely jaded. "I think most of us fall in between," he says. "It's not been all wonderful, but there's a lot of great change going on right now. In previous years, the focus has not been what it needed to be."

"Overall, it's a good company," he adds. "They're just going through normal growing pains. You read a lot about food costs and lawsuits. I don't get caught up in that. I focus on my day-to-day business. They know what things I'm unhappy about."

Still, local TSFA members are watching the company's new leader closely. Brenneman has yet to address calls for the dissolution of the Quiznos subsidiary American Food Distributors in favor of a food co-op. Full-page ads offering multiple buy-one-get-one-free coupons are still running in newspapers around the country, including here in Denver, as are the ads exclaiming "2007, The Year to Be Your Own Boss and Celebrate Your New Independence." And owners claim some of those newly reduced cost supplies are still cheaper at Sam's Club.

At his store in Boulder, a Colorado TSFA member flashes the crazy smile of someone who knows he's at the end of his rope. "I am so pissed off and disgruntled," he says.

He bought his Quiznos after being laid off from his job, after twenty years in the high-tech field. He was going to be his own boss. That thought makes him laugh now. He points at the chip display in front of the counter. Every decision -- down to where on that shelf he must place his SunChips -- is made by corporate. He's not the boss of anything. He works more than seventy hours a week. His income from Quiznos has been slightly more than he made in his last career. But back then, he worked forty-hour weeks -- with weekends, lunch breaks, health insurance, paid vacations and sick days. He'd take it back in a heartbeat if he could.

But that's the nature of franchising -- something he might have realized if he'd done a little more homework. What's got him "so pissed off" goes far beyond that. Take, for example, a woman who recently came into his store. She was thinking about buying a nearby Boulder Quiznos. Corporate had given her a worksheet to calculate how much she'd have to sell each week to break even. "They obviously have never shown you the weekly sales data for the state of Colorado," he told her when she showed him her break-even number. It was $3,000 more than the top store in the state had sold the previous week, a number to which Quiznos corporate clearly has access. "They couldn't care less once you sign," he says. "Buy a Quiznos. American Dream. Be your own boss. It's all a lie."

He used to keep a copy of Baber's suicide note posted on the bulletin board in his store, but he has since taken it down. He wants to choose his battles wisely. "The truth is getting out, and they're doing everything they can to call the guy that's telling the truth the bad guy," he adds. "That's why they're trying to squash the TSFA. They don't want us to be organized, because individually, not one of us, as Mr. Baber tried to do, was going to win against them."

If there's anyone more disgruntled, it's Bray. He's seen a lot of his fellow franchisees' savings decimated, marriages ended and lives destroyed. "A lot of franchisees take their licking and go on, and that's fine for them," he says. "I'm not like that. If you're going to deceive somebody, there's a price to be paid for that. I compare Quiznos to Enron and WorldCom. Even though Quiznos is private, in a lot of their shenanigans I see a mirror image, and certainly Bob Baber saw that as well."