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**Make & Take, franchisees battle in court**

**Lawsuit stems from misleading claims of earnings potential**

By: Kevin Tampone

09/19/08 03:40 PM



Make & Take Gourmet, a locally based chain of "meal-assembly" kitchens, founded by Michele Belliso is being sued by three former franchisees. The owners of the former Make & Take locations say they received false information concerning potential earnings.

SYRACUSE - Three former franchisees of Make & Take Gourmet say they lost large sums of money on their stores after receiving false information concerning potential earnings from the company.

The franchisees are owners of former Make & Take locations in Camillus, Baldwinsville, and Clifton Park (in the Albany-Schenectady area). All three stores closed earlier this year.

The franchisees' accusations are included in a lawsuit they filed against Make and Take Gourmet Holding, LLC and the company's owners, Michele and David Belliso. The group filed the suit in June in Onondaga County State Supreme Court.

They're looking to recover money they lost from their involvement with Make & Take and are asking the court for punitive damages.

Make & Take is a chain of "meal-assembly" kitchens. Customers choose meals from a menu and use store-provided ingredients, cooking gear, and kitchens to create multiple servings they then take home.

All three franchisees suffered damages of some \$2 million each, according to the suit. The franchisees include Shawn and Lisa Tyszka, who owned the Camillus store; Cheryl and Eugene Grenga, who owned the Baldwinsville location; and Brian and Lisa Clark, who owned the Clifton Park

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Let's assume for the moment that Treasury Secretary Paulson's \$700 billion bailout plan will work. Yes, I know that's a giant assumption, since the Congress has already added on another \$100 plus billion in pork. And yes, despite the rescue plan,

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So it's come to this. Many of us in business have been there. An employee fails to get the job done for an extended period of time. And after several warnings and attempted corrective actions the moment finally arrives when you, the manager, have

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store.

Make & Take will strongly defend itself against the suit, says the company's attorney, Shelly DiBenedetto of Costello, Cooney & Fearon, PLLC in Syracuse.

"We're confident we'll be able to demonstrate that this is a frivolous claim that doesn't merit being brought in the first place," she says. "This is a case of people not being happy with a business decision they made."

DiBenedetto says she can't comment on the lawsuit in detail as it's still ongoing.

In the suit, the plaintiffs say Michele Bellso gave written information to the Tyszkas, the Grengas, and the Clarks, stating that in their first year, the groups could expect to earn some \$131,000 in net profit and \$775,000 in gross revenue.

Bellso also made a variety of other statements to the groups, according to the suit, including:

- Telling the Tyszkas they would only need 200 to 250 customers per month to break even and that it was "extremely easy" to get that many
- Informing the Grengas that they could expect to make \$3,000 to \$4,000 in one night and adding that a corporate-owned store in Cicero generated more than \$1 million in revenue during its first year of business
- Telling the Clarks they could expect their sales to "practically double every month" and that they could expect to break even and earn a profit within a few months of opening

All information on earnings was "false and misleading" and meant to "induce" the franchisees to invest, the lawsuit charges. The actual performance of the three stores missed Make & Take's claims by quite a bit, says the attorney for the franchisees, Michael Einbinder of Einbinder & Dunn, LLP in New York City.

Einbinder declined to comment on details of the stores' finances.

Based on what they were told, all three franchisee groups spent money on launching their locations, paid fees totaling \$51,000 to Make & Take before opening, and later lost major sums.

"You buy into these things with a certain investment strategy in mind," Einbinder says. "You give up a job for this. You spend a certain amount of money believing that a certain amount of dollars is going to be there."

In all three cases, the bad earnings information was a major reason for the failure of the stores, he says.

Not only was the information false, providing it at all was illegal, Einbinder adds.

State law, he says, forbids companies from making such earnings claims unless they're contained in a specific document, called a uniform franchise offering circular. Make & Take did not provide the franchisees with that document before actually selling them franchises, Einbinder says.

In some cases, franchisees received the document later, but selling a franchise without one is prohibited, he adds.

In addition, Einbinder says, Make & Take was not registered with the state to sell franchises when it dealt with the franchisees in the lawsuit.

Einbinder says it's not the job of potential franchisees to know what the law requires. The burden, he explains, is on the company selling the franchises.

"It's not up to the franchisee to make sure they get what they're required to get," he says. "It's not their job to even know what they're supposed to get. The law is very clear."

The suit also names the Syracuse law firm of Bond, Schoenck & King, PLLC as a defendant. The firm provided legal work for Make & Take, according to the suit.

The firm helped Make & Take circumvent state

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Breaking news. Have you heard? The economy is down. The economy is down, but how about your economy? Regardless of the state of your industry, the condition of your market, and even the state of your sales, as a salesperson it's best to look at



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requirements by creating licensing agreements for the company, the suit charges. The actions were part of a "scheme" to sell franchises in violation of the law, according to the suit.

Bond, Schoeneck & King moved to dismiss the claims against the firm in August.

"We believe that the plaintiffs have no valid claim against Bond, Schoeneck & King," A.J. Torelli, a firm spokesman, wrote in an e-mail.

Make & Take launched in 2006 and began expanding rapidly with both corporate-owned stores and franchise locations. In addition to the three closed franchises involved in the lawsuit, Make & Take shut down a corporate store in Fayetteville in August.

The company now has 13 stores, according to its Web site, including several locations in Central New York and in the Rochester area. It has additional stores in Pennsylvania, Maryland, and Virginia.

Last year, Michele Bellso predicted 60 or 70 franchise locations would be open in 2007.

Throughout its short history, Make & Take has been lauded repeatedly for its growth. The company was a finalist in 2007 and 2008 for the Creative Core Emerging Business Competition, a \$100,000 business contest aimed at recognizing the region's most innovative and growth-oriented company.

Make & Take did not win the competition either time.

Contact *Tampone* at [ktampone@cnybj.com](mailto:ktampone@cnybj.com)


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