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Quiznos - 1-2-3 Fit - Smashburger (Follow the money and the "leaders") Buyer Beware!!!

Submitted by [General Fran](#) on Sat, 2009/03/07 - 02:30. [franchising](#)

Unhappy with Quiznos? 1-2-3 Fit not what you thought it was? Then why would you want to follow the same folks and invest in a Smashburger franchise?

You guessed it. Rick Schaden and friends (Brooksy Smith, Dan Demolli etc...) were the folks who brought you Quiznos and the myriad of lawsuits and problems they have and continue to have. They made tons of cash, leaving a trail of broken dreams, empty bank accounts and lost retirements in their wake and the failed franchisees left holding the bag.

Well, Rick decided to create a company called Cervantes Capital, located at 1515 Arapahoe Street, Tower One, 10th Floor Denver, CO 80202 Phone: 303.592.3800 | Fax: 303.592.3887 [www.cervantescap.com](#)

This company takes the money these folks have made from selling Quiznos and invests in other businesses among other things.

Rick Schaden and Brooksy Smith, invested their "hard earned" cash into a company called 1-2-3 Fit. They immediately hired Dan Demolli, who made lots of money selling Quiznos franchises, to sell 1-2-3 Fit franchises. Did we mention this company was located in the original building where Quiznos used to be headquartered in Denver? Well, after a few years and leaving a trail of broken dreams, empty bank accounts and lost retirements in their wake and the failed franchisees left holding the bag, they are moving on once again!

1-2-3 Fit has yet to close its doors, but after speaking with a majority of the remaining 20 or so clubs, only one or two is making any money, most are either in the process of closing or trying to figure out how to hold on until they make it profitable. This would not be as hard a task except for the fact that none of the franchisees we spoke with receive any help, contact or communication with the corporate office.

In recent months, corporate 1-2-3 Fit has downsized down to 1 or 2 full time employees (CEO Brooksy Smith and an accountant as well as a Sr VP of franchising who is being used as a buffer between Brooksy and the franchisees, but doesn't quit realize it yet!) They have even closed their own 1-2-3 Fit training center and corporate club and moved the corporate office into a single office located in the offices of one of their lawyers. Bottom line, they have cut off communication with their own franchise owners and eliminated all corporate marketing, support and services they tout in the UFOC. They are just collecting royalties, while they pursue...wait for it...

SMASHBURGER!!!

Yes indeed. Cervantes Capital (see above) has invested heavily into this franchise. Guess where their corporate office is located?
Smashburger Master LLC ♦ 1515 Arapahoe Street ♦ Tower 1 Suite 1000 ♦ Denver, CO 80202

Wow! That is the exact same address as Cervantes Capital (run by Rick Schaden and friends)

If you are interested in buying a franchise you can contact...wait for it...

Dan Demolli
(303) 592-3855
ddemolli@mysmashburger.com

The same person of Quiznos and 1-2-3 Fit fame. They have done such a poor job with 1-2-3 Fit that they conveniently left it out of his background on the mysmashburger website. Why would that be?

Rumor has it, and we are working to confirm it, but guess who else is helping out at Smashburger? Mr. Brooksy Smith!!! Recognize this name from Quiznos and 1-2-3 Fit fame?

So, if you are considering a Smashburger franchise, follow the money trail and the people trail and go into this eyes wide open.

We will keep you posted as we get more information. It is always fun to keep an eye on some of these folks!

General Fran - Fighting the good fight!

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Why would anyone sign up for this?

Submitted by [Granville_Bean](#) on Sun, 2009/03/08 - 18:06.

Why would a prospective MUF with that level of assets buy into THIS? What is truly new, what is actually proprietary, about this "concept"???

Why not just launch your own, why pay these promoters just for their untested bright idea? What a way for the promoters to get money up front for little more than an idea, without having to prove the idea works.

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Beware The QScrew

Submitted by Guest (not verified) on Sun, 2009/03/08 - 19:12.

ANYONE who signs up with a (p)Rick Schaden run operator is guaranteed of one thing - The Ol' QScrew. The Qtards have ripping off franchisees down to a science and even multi-owner franchisees are at a disadvantage because there is a basic assumption that your business partner isn't trying to suck you dry. In (p)Rick's case it's true - figuratively and literally.

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FOLLOW THE MONEY -- from Quiznos

Submitted by Guest (not verified) on Sat, 2009/03/07 - 12:23.

Looks like the BIG CON but, apparently, all legal under current law and regulation.

These same ACTORS who steal the life savings and security of good faith prospects who are looking for a means to make a living will have their best sales representatives at the Spring Franchise shows throughout the country.

ALL PROSPECTIVE FRANCHISEES should be WARNED TO NEVER TAKE THEIR CHECKBOOKS to these shows and to NEVER even think of doing business with a franchisor who doesn't make an earnings claim in Item 19.

Times are bad and the snake oil salesmen are looking for those with severance packages, recently downsized corporate types, and especially retired military or discharged veterans who are eligible for the SBA Patriot Express Loan guarantee from the government.

Thanks, General Fran! Waiting for the next chapter on the Quiznos actors.

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FOLLOW THE MONEY -- from Quiznos Response

Submitted by [General Fran](#) on Sat, 2009/03/07 - 13:05.

We are making no claims to the legality or illegality of what they are doing. We try to stick to the facts.

It is important as you mentioned, for all to be warned and made aware of moral or ethical issues and then provide their own due diligence before moving forward.

In reality, Smashburger is looking for the following franchisees:

"FRANCHISE QUALIFICATIONS:

smashburger (smashburger Franchising LLC) is seeking multi-unit development partners in territories throughout the United States. To be considered, individuals or partnerships must meet the following minimum characteristics:

5 years multi-unit restaurant management experience as an owner and/or operator

Experience with operating a minimum 10 unit business
Minimum financial net worth of \$2 million and liquidity of \$500,000
Typical development agreement commitment of 10-25 units..."

It is clear that most downsized, retired military or discharged veterans will not qualify. They are going after bigger fish this time. It appears they don't do a good job with creating success with the individual franchise owner, as evidenced through Quiznos and 1-2-3 Fit.

Here is another claim directly from their website:

smashburger only succeeds if our Franchisees succeed, and we are committed to success! We will do our best to provide you with systems, resources and support you need to operate your business successfully, including:

...Vendor and Equipment Specifications
On-site Store Opening Support
Marketing and Advertising
Operations Support
Availability to Answer Questions..."

We find it amazing how they can state these things. It begs the question...Why would anyone believe this, especially if you see how these same people ran Quiznos and 1-2-3 Fit. They made all the same promises. Contact any existing or past owner and ask about the availability to answer questions, or marketing and advertising or operations support.

In fact, at 1-2-3 Fit, they turned all the vendors over to deal directly with the franchise owner, taking themselves out of the loop. They also used to have a \$1500 per month marketing and advertising program in place because as they stated the franchise owners dont have the expertise or willingness to market/advertise properly so we will create a monthly program and charge you \$1500/mo for it. This actually was effective for a brief time until...

1-2-3 Fit eliminated this program along with all club owner conference calls, weekly communication reports and disbanded the club owner advisory council really early on. This is hardly what most consider support or availability to answer questions, let alone want you to succeed.

In our communication with most owners past and present, they felt like they were islands cutoff from corporate. Call for yourselves and find out from folks at 1-2-3 Fit and Quiznos how it is.

They sell you a franchise based on a "proven system, marketing support and corporate experience." Then they renege on all of it leaving everyone high and dry. If this is what you want in a franchise then Quiznos, 1-2-3 Fit and Smashburger would all seem to be a great fit. However, if you desire help or lack any skills and are going to rely on the corporate office, then you will be miserable and stand a much higher chance of failure.

We have put in numerous calls and e-mails to the corporate 1-2-3 Fit office and have had no response. According to many current 1-2-3 Fit owners, they never responde to their phone calls or e-mails. Hardly what we would consider support.

Best of luck,

General Fran - March on soldiers

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They hide behind their FDD

Submitted by [Do Diligence](#) on Sat, 2009/03/07 - 13:55.

My conclusion to my studies of franchising is never sign a document that takes you a long time to read and understand. There are misleading statements and they are there to protect them. There is nothing there to protect you. If you don't believe me talk to Solomon and all the great lawyer's here on BMM. Just because you don't go around and hurt people doesn't mean other's do the same.

Our family has been hurt by these people. Do they really care about the homeless? Do they really care about education? If they give donations it is because of their own selfish reasons. They have no heart.

THEY DO NOT CARE ABOUT THEIR ZEES. THEY ONLY WANT YOUR MONEY.

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They hide behind their FDD Response

Submitted by [General Fran](#) on Sat, 2009/03/07 - 14:24.

The actions of the the folks at Quiznos, 1-2-3 Fit and Smashburger, support your

assumption about corporate not caring about their zees and only wanting your money.

One must always be careful who you make your bed with.

General Fran - Never give up!

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Quiznos ---Follow the money!

Submitted by Guest (not verified) on Sat, 2009/03/07 - 13:44.

Obviously, the difference between Multiunit franchisees (MUFs) and Single Unit Franchisees (SUF's) will mean that really sophisticated people will be dealing with really sophisticated people with money who will do deep due diligence before they buy as a franchisee.

But, why would Quiznos try to franchise in such a saturated sector? Maybe the real money is made somewhere else --like in IPO's or Securizations, or what?

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Quiznos ---Follow the money! Response

Submitted by General Fran on Sat, 2009/03/07 - 14:19.

Just because someone has money to be a MUF does not mean they are going to be sophisticated, (I believe you meant with money)or not be able to be taken advantage of.

Case in point: millions of people with lots of money, including businessmen, actors and sports figures all invested large sums of money with Bernie Maddoff and he burned everyone to the tune of \$50Billion.

The point here is to vet out any and all issues before joining into an agreement with anybody.

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Do MUF;s sign standard non-negotiable agreements

Submitted by Guest (not verified) on Sun, 2009/03/08 - 12:59.

I get it, General Fran. But do multiple unit owners who invest millions of dollars sign standard form contracts in which they agree to give the franchisor royalties on their gross sales --their top revenue, from the first minute the units are open for business.

Or, do the MUFs negotiate better terms with the franchisor?

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Think normal market place dynamics. If the MUF already

Submitted by RichardSolomon on Sun, 2009/03/08 - 14:19.

has a positive operational history in a similar business - like food service but another food service model - negotiations range widely across many categories of contract terms. Among the more frrequent to be modified or deleted are covenants not to compete, liquidaqted damages clauses, designated vendor requirements, renewal rights, assignment terms, rights of first refusal on territorial expansion situations, better territorial protection, franchisee's termination options, cross default provisions, personal quarantees and so on.

Platinum prospects won't take the same terms as the FranWads. They don't have to.

--

Richard Solomon, [FranchiseRemedies.com](#), has over 45 years experience with franchise litigation and crisis management. He is a graduate of The Citadel and The University of Michigan Law School

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Normal market place dynamics

Submitted by Guest (not verified) on Sun, 2009/03/08 - 14:44.

Are you saying, Richard Solomon, that FranWads, who are generally unsophisticated job seekers, who have to incorporate themselves to do business with a franchisor are NOT given the benefit of any bargaining of the contract with franchisors because they do believe that the contract cannot be bargained and THAT is non-negotiable for all of the franchisees in the system. The package of the FDD and the contract encourages this belief, of course.

Are you saying that AFTER the contract is signed, the franchisor can, if he so desires, bargain with certain of its franchisors to change the terms if they so desire and both parties agree?

It follows then that the big name franchisors like Quiznos, The UPS Store, Cold Stone, and, of course, the very successful McDonald's do not negotiate terms on an individual basis because they don't have to. But, McDonald's have a history of profitability and the others currently do not and indulge in rampant churn and turn to retain their visibility in the economy.

I can see why you have always recommended that Franchisee Associations need an attorney and a PAC up front because all the power is with the franchisor who, under contract, can prevent any collective bargaining by the group because the franchisee is always kept separated from the group by the terms of the contract.

After reading Janet Sparks article on Blue Mau Mau where there is talk of the Bennigan's bankruptcy and the Bennigan's Royalty Strike because of failure of the franchisor to deliver what he promised, and legal action by the franchisor to collect the royalties, etc..we can see that the franchise contract and the whole process is arranged to prevent royalty strikes by those franchisees who aren't making any profits.

While a franchisor can immediately go to court and get an injunction to close down a unit that isn't paying royalties, he isn't of course going to do this if a good proportion of his system unit franchisees agreed to a royalty strike, is he?

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Do MUF;s sign standard non-negotiable agreements - Response

Submitted by General Fran on Sun, 2009/03/08 - 14:14.

Everything is negotiable, regardless or multi-unit or single unit.

We know of lots of franchise owners (single and multi-unit) who paid royalties from the start either because they didnt negotiate or the franchisor chose not to deviate from the UFOC. On the other hand we know lots of franchise owners (single and multi-unit) who successfully negotiated more favorable terms for them in their UFOC.

McDonalds, among others, does not do much discounting at all. Either you accept their terms or dont purchase. Usually the discounts come in the form of a reduced purchase price for the additional units, not the royalty payments.

Exceptions are everywhere, but based upon our experience this is how it usually plays out.

One more item: Regardless of the single or multi-unit, big business or small, it is always a great idea to ask for concessions. The one guarantee is this: If you don't ask we gaurantee you WON'T get it! Do not be afraid to ask, worst case they tell you no and you are back where you started. Best case, you get all or some of what you asked for.

General Fran - Keep your ears to the ground soldier!

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Thanks

Submitted by maddog on Sat, 2009/03/07 - 08:52.

..... for connecting all the dots leading to investment hell.

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Subs, Fitness and Burgers, Oh My!

Submitted by [Do Diligence](#) on Sun, 2009/03/08 - 01:45.

Quiznos has many people writing their horror stories. 123 Fit has many people writing their horror stories. How long before there will be bloggers writing about Smashburger? Subs, fitness and burgers oh my! Subs, fitness and burgers oh my! (Taken from the Wizard of Oz - lions and tigers and bears oh my!) You should be scared. These guys are bad. Your in danger financially. Nothing but legal organized crime. Do not trust any of them.

They follow the money. They have taken alot of baby boomers money. Will their next franchise be mortuaries? They say follow the baby boomers and baby boomers are getting old. What is next? Express embalming or getting toasted?

There are three things certain in life. Death and taxes and doing business with Schaden and his partners is a sure route to financial hell.

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Subs, Fitness and Burgers, Oh My! - Response

Submitted by [General Fran](#) on Sun, 2009/03/08 - 14:23.

We have uncovered many positive articles written early on about 1-2-3 Fit. Using this knowledge, it would be prudent for past or present owners to write the local Denver area papers, magazines as well as franchise trade magazines to tell your stories and express your experience.

Put these institutions to work for you to help them in doing some investigative work. They are after all, after the next big story!

We have noticed even Smashburger is getting some positive results in the local paper, much like 1-2-3 Fit and Quiznos did in the beginning of their business cycle.

Never underestimate the power of grass roots action.

General Fran - Never give up!

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