

Firm piles lawsuits onto 7-Eleven claiming heavy hand



- Pinterest
- Facebook
- Twitter
- Email
- Gmail
- StumbleUpon
- Favorites
- More... (291)

[Sign In](#)

AddThis [Privacy](#)

Lawsuits are mounting against 7-Eleven, claiming the convenience store chain exerts undue control over franchisees and 'churns' their stores. 7-Eleven touts its low turnover rate and wants the claims dismissed.

New Jersey law firm Marks & Klein has filed nine lawsuits over the last 18 months against 7-Eleven in Dallas, alleging the world's largest convenience store chain discriminates against its franchisees who are immigrants from Southeast Asia, churns stores by forcing these franchisees to give them up and then selling them to new operators, and exerts so much control over its franchisees that they are employees, not independent business owners.

The firm filed a 10th lawsuit in late September claiming the chain also incorrectly classifies its hundreds of field consultants to avoid paying them overtime.

The circumstances behind two of the lawsuits, filed this spring on behalf of California franchisees, drew the attention of mainstream media and prompted protests in Los Angeles earlier this year.

"In essence, 7-Eleven has been using its franchisees as free labor and stealing the equity they have in their stores," said attorney Gerald Marks of Marks & Klein in a telephone interview. "7-Eleven has created this problem by its own hand, and we anticipate more actions soon."

On the other hand, 7-Eleven has filed for motions to dismiss in several cases, and touted its high retention rate of franchisees in a statement. 7-Eleven is "proud of its very diverse, independent franchisee population," the statement said.

Launched in 1927

7-Eleven was launched as Tote'm, convenience stores that sold gasoline, by the Southland Ice Co. in Oak Cliff, Texas, in 1927. Because the stores were open from 7 a.m. to 11 p.m., Southland changed its name to 7-Eleven in 1946.

Southland opened its first stores outside Texas in 1954, started franchising in 1963 and

ADVERTISEMENT

2014 Executive Blueprint

of the 24th edition

Chain Restaurant Industry Review

[Click For Free Download](#)

ADVERTISEMENT

grew to more than 25,000 stores worldwide. In 2005, 7-Eleven was purchased by Japan's largest retailer, Seven & i Holdings in Tokyo, which now oversees 8,300 stores in the U.S. and 40,000 more across the globe.

"Before 2005, franchisees were partners and were making good money. Today they are minions," said Marks & Klein attorney Louis Tambaro.

According to a lawsuit filed in July 2014, Seven & i Holdings hired West Point graduate Joseph DePinto as CEO of its U.S. division in 2005. It began an approach to business, the lawsuit alleges, that exploited franchisees by diminishing their roles and, in some cases, taking over their stores and reselling them at a profit.

The lawsuit was filed on behalf of members of the Franchisee Owners Association of Greater Los Angeles, known as FOAGLA, and other franchise owners associations in the state.

The FOAGLA lawsuit alleges that in 2013, 7-Eleven hired 35 employees for their asset protection/loss prevention department and "instituted quotas" for the number of stores they should "take back" from franchisees. Their tactics included checking up on owners with cameras, and their targets, the lawsuit claims, were owners of profitable stores in California, New York and New Jersey, of South Asian descent, because their cultural values make them more likely to "acquiesce to coercion," the lawsuit alleges.

7-Eleven was waiting for Marks & Klein to file an amended complaint to this lawsuit before filing a motion to dismiss, a company spokesperson said. A 7-Eleven motion to combine the FOAGLA case with similar lawsuits was turned down by California courts.

7-Eleven and its attorneys would not comment further on the individual cases, but issued a statement saying 7-Eleven has been cited as a top franchise for minorities. Far from spying



RESTAURANT FINANCE MONITOR'S
**RESTAURANT
FINANCE & 
DEVELOPMENT
CONFERENCE**

NOVEMBER 10-12, 2014

BELLAGIO • LAS VEGAS

WWW.RESTFINANCE.COM

POPULAR ARTICLES

1. [Restaurant Franchises Jump Into Early-Bird Shopping Act](#)
2. [Sandwich lovers, try to name that chain...](#)
3. [Brentwood Sells Pizza Hut Franchisee](#)
4. [Franchise Finance Panel Tells How to Attract Capital](#)
5. [Family Business](#)

RELATED ARTICLES



[The Perils of Flying](#)



[The Inside Scoop on Expanding to Mexico](#)



[Music's in the ear of the beholder](#)

on franchisees, the statement says, “the enhanced surveillance-camera systems in 7-Eleven stores represent another step the company has taken to increase the security of customers and employees.

“7-Eleven has a very high retention rate for franchisees,” the statement says, with a less than 4 percent turnover rate nationwide in 2013. “That includes every time a store changes ownership, including when 7-Eleven Inc. sells a store to a franchisee and franchisees choosing to retire or sell their franchise.”

Too many Slurpee coupons

According to a lawsuit filed in March 2014, Dilip and Saroj Patel had no choice about giving up the 7-Eleven they had run in Riverside, California, for 19 years. Their complaint alleges the couple was called to a meeting last December with 7-Eleven personnel who accused them of fraud for “their excessive use of Slurpee coupons” and wouldn’t let them leave until Mr. Patel signed over their store.

According to court documents, as soon as the Patels and their 27-year-old son, Dev, who managed their store, arrived at the meeting, the older couple was taken to a small room where employees allegedly showed them a short video they claimed documented their fraudulent couponing.

The lawsuit claims they were told their franchise was being terminated immediately and they had to pay 7-Eleven \$100,000 or the franchisor would file a lawsuit against them for \$250,000. Although Mr. Patel said they had just been following 7-Eleven’s policy of giving away Slurpees to local elementary students who earned good grades, court documents say, he signed the settlement agreement, giving back their store. The lawsuit seeks to void that agreement and seeks compensatory and consequential damages from 7-Eleven.

In a motion to dismiss the lawsuit, 7-Eleven claims the couple was never involuntarily confined and that the Patels had “failed to record hundreds of thousands of dollars in merchandise sales.” The court denied the franchisor’s motion to dismiss and a trial date is pending.

Watching eyes

In a second case also filed in March, Adnan Khan, who has operated five 7-Elevens in Southern California for 34 years, claims he was the victim of “illegal surveillance, franchisor abuse and the intentional infliction of emotional distress” when the franchisor’s asset-protection employees used cameras to spy on him in his stores, then “stalked” him when he left, once almost running him over with their car.

7-Eleven attorneys James Speyer and John Lombardo of Arnold and Porter in Los Angeles filed motions to dismiss the case, claiming that Khan had never proven he had been stalked or suffered any injury. The motions were denied.

Although Marks & Klein’s clients have separate issues, “the main theme of many of these lawsuits is that 7-Eleven’s franchise agreement grants the franchisor such extensive control over franchisees’ day-to-day operations that the relationship should be reclassified as one of employer and employees,” said Tambaro. 7-Eleven owns all stores, court documents say, processes all franchisees’ payroll accounts and controls the heat and air conditioning in their stores and the volume on their television sets.

Franchisees pay initial fees to operate a 7-Eleven of \$39,750 to \$1,122,100, according to the company’s March 2014 franchise disclosure document, and pay 7-Eleven a royalty of



Be at home when
you're not

about 52 percent of their gross profits, defined as net sales less the cost of goods sold, keeping 48 percent. In an interview, Marks said, "they should also be paid for the time spent in their stores like any other corporate employee and 7-Eleven should provide medical and other benefits."

The hundreds of field consultants 7-Eleven employs to monitor franchisees claim they, too, have been misclassified as part of management and therefore exempt from overtime pay.

In a separate lawsuit, filed September 17 in New Jersey, *John Spavlik, Deborah Kish et al. vs. 7-Eleven*, the law firm claims the franchisor violates the Fair Labor Standards Act and wage and hour laws of New Jersey by requiring plaintiffs to work 60-hour weeks without additional compensation.

Not eligible for SBA

FRANdata, a research firm in Washington, D.C., maintains the SBA Franchise Registry, listing franchises that provide their franchisees enough autonomy to run their units as small businesses and are eligible for Small Business Administration-guaranteed loans. 7-Eleven is not listed on the registry.

In an email to Franchise Times, FRANdata President Edith Wiseman said the U.S. Small Business Administration has "identified issues within the 7-Eleven franchise agreement that they would have to overcome to obtain SBA financing," including excessive fees, the requirement that store receipts are deposited into the franchisor's account and the fact that the franchisor owns the assets of the business and provides its payroll services.

But David Kaufmann, of the New York law firm Kaufmann Gildin & Robbins, who represents 7-Eleven against Michael Governara, another Marks & Klein client, said, "I frankly think there is no merit to the argument that 7-Eleven is an employer instead of a franchisor. And 7-Eleven has taken folks from Pakistan, India and Vietnam, taught them how to operate a store and introduced them to the American economic system. I think it is specious and insulting to claim that 7-Eleven is targeting these franchisees."

Rupert Barkoff, chairman of the franchise team in Kilpatrick Townsend & Stockton's Atlanta office, mentions the 7-Eleven cases in his September 15, 2014, column for the New York Law Journal, titled "Is the Franchising Business Model in Serious Trouble?"

In an interview, Barkoff said the issue of whether some franchisees should be considered employees "is being discussed quite heavily in the franchise legal community and raises some legitimate questions. For example, if a court rules that 7-Eleven franchisees are entitled to the wages and benefits of employees, what happens to their franchise agreements? Such a decision could really change the economics of the franchise business model."

[Featured Stories](#)

[Franchise Advice](#)

[Franchise Opportunities](#)

[Personalities](#)

[Conferences](#)

[Advertise](#)

[Subscribe](#)

[Contact](#)

[My Account](#)

[Store](#)

[Current Issue](#)

Copyright 2014 Franchise Times. All Rights Reserved.