FRANCHISES

Insider Files Whistleblower Report Against Domino's Pizza

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Domino's Pizza Shop in Camp Lejeune, North Carolina

A corporate insider has filed a well-documented whistleblower report with the U.S. Securities and Exchange Commission (SEC) against Domino's Pizza, its top-level officers, and various staff members. The complaint states serious allegations against the franchisor related to the circumstances surrounding the company's misconduct. It lists, "Fraudulent investment scheme; general trading practices; manipulation of security; insider trading; material misstatement or omission in company's public filings or financial statements; and bribery."

The crux of the whistleblower report details how Domino's allegedly forced and orchestrated an unapproved advertising and promotion increase to franchisees in order to pay a $1.85 billion Securitization Transaction (March 25, 2007) with a new partially funded $1.67 billion Securitization (March 15, 2012) debt owed to Securitization entities (pg. 505). The report alleges that in return, Domino's Pizza's CEO, board members, officers, and employees "could enjoy higher stock prices and dividends through share repurchases and dividend payouts."

Why should franchisors be concerned about SEC whistleblower reports? Mainly because the Commission repeatedly expresses that it takes these reported allegations seriously in hopes of finding corporate securities fraud. Especially, when it comes from a corporate insider.

The Securities and Exchange Commission states it clearly saying it regards whistleblower complaints by individuals who know of possible securities law violations as the "most powerful weapon in its law enforcement arsenal." SEC's website concedes that "through their knowledge of the circumstances and individuals involved, whistleblowers can help the Commission identify possible fraud and other violations much earlier than might otherwise have been possible." The filed complaints also "allows SEC to minimize the harm to investors, better preserve the integrity of the United States' capital markets, and more swiftly hold accountable those responsible for unlawful conduct."

As an introduction, the whistleblower’s extensive report describes how Domino’s Pizza began to "orchestrate" a new round of recapitalization on March 15, 2012 with the placement of certain subsidiaries for a $1.675 billion securitized debt facility. The CEO, officers, the board of directors, and employees increased the value of their stock options with stock repurchases and issued a $3 per share special dividend. This was achieved by Domino's Pizza’s full involvement, as the manager of an "Advertising and Promotion Amendment," which was conveyed to franchisees and investors that would become effective and binding as of December 31, 2012, once 100% of franchisees in good standing agreed to the obligations set forth in the amendment.

But when Domino's and its subsidiaries failed to achieve 100% unanimous support from the franchisees by the December 31, 2012 deadline, Domino's then "orchestrated a scheme to exit franchisees and negate the requirements set forth by Domino’s Pizza LLC, and prior Securitization Transactions established with the financial institutions.” The report alleges the Advertising and Promotion Amendment “was the key component in achieving the necessary funding required to be in compliance with Securitization and Financial Institutions.” The securitization of those assets, which the Advertising and Promotion Amendment was one such asset that was desperately needed by Domino’s Pizza LLC.

To clarify, documents show that although Domino's was required to get 100% votes from franchisees on raising the advertising fee from 5.5% to 6% as part of the securitization, the franchisor fell short of the votes. However, the company publicly stated that they did get the 100% and moved forward with the transaction.

Highlighted below, is the key component in describing the whistleblower's claims that Domino's concocted a well-orchestrated plan to increase the value of its stock.

SEC Whistleblower Program Website HTTPS://SECWHISTLEBLOWERINFORMATION.COM/THE-SEC-WHISTLEBLOWER-PROGRAM/STATISTICS/3-SEC-WHISTLEBLOWER-PROGRAM/

Material Misrepresentation on Domino's National Advertising Fund and Domino's Advertising Increase Amendment

(Securities Exchange Commission, Federal Trade Commission, Investors, Shareholders, and Franchisees)

In a significant section of the extensive whistleblower report, the insider explains how Domino's communicated to all national franchisees in January 2013 that the company had taken a big step forward in asking the franchisee system to support a 0.5 percent shift of advertising from local to national. The franchisor believed that shift would provide an extra $25 million of systemwide incremental profit, or an average of $5,000 to the bottom line of each store. Domino's said in exchange for the franchisees support and amendment of the existing standard franchise agreements, the company agreed to extend standard profit-sharing agreements by five years.

That change was documented in Domino's **2013 Amendment** (attached to the report) that "going forward, all new standard franchise agreements will contain the rolled-up 6 percent national advertising rate."

DPZ Communications on January 10, 2013 regarding 2013 Amendment (to entire franchisee body) reads as follows:

To summarize, the Amendment states:

- Target was 100 percent of system participation and we are moving forward at 99.7 percent
- DPZ will fund the shortfall from the three "no" votes so the ad fund will be 100 percent funded...
- 100 percent of the incremental contribution in 2013 will go to working media
- DPZ will extend all standard SCS profit sharing agreements five years for all "yes" voters, regardless of DPZ performance...
- Assuming sufficient support, the new advertising rate will begin January 28, 2013.

Survey Results show a different scenario: Domino's Franchisee Association (DFA) 1/2% Amendment Survey Results on January 12, 2013, Page One states, "The overall results on the surveys reflected the following:

- 50% felt their vote was not voluntary
- 80% felt the amendment required 100% support of every Franchisee to pass
- 80% felt the amendment had a 12-31-12 or before deadline in order to pass"

Page Two of the survey results states, "To ensure the original commitments were honored, the DFA (Domino's Franchisee Association) was very clear with DPLLC that moving forward on the original amendment was unacceptable since we believed 100% support from every franchisee was needed by December 31, 2012."

During Domino's Pizza February 24, 2015 Quarter 4 conference call, J. Patrick Doyle Domino's Pizza CEO, states: **"**In fact, our franchisees recently voted to increase our national advertising spend going forward, upping it to 6% of top line sales from 5.5%. We think this is a positive vote of confidence from our franchisees. (Page 2)

Jeffrey Andrew Bernstein, Barclays Capital, Research Division, questioned*:* **"**And that was approved across the board? So now everybody does the same thing?" J. Patrick Doyle, Domino's Pizza CEO replies, "Yes." (Page 3)

[Note: The Whistleblower Report's comprehensive information with links related to Domino's Pizza's strategy in achieving its commitments to Securitization Entities will be published on Bluemaumau.org Janet Sparks, reporter.)

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Janet Sparks is the former publisher of the Continental Franchise Review, an industry newsletter that covered the franchise... **Read More**