

08 1620

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ APR 18 2008 ★

BROOKLYN OFFICE  
VITALIANO, J.

KLAFTER & MASON, L.L.C.  
Manalapan Corporate Plaza  
195 Route 9 South, Suite 204  
Manalapan, NJ 07726  
P: (732) 358-2028  
F: (732) 358-2029  
glm@kmrslaw.com  
Attorneys for Defendants

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT NEW YORK

GO. M.J.

\_\_\_\_\_  
DINO DiPIETRO, LISA DiPIETRO, :  
KENNETH BERNATZKY, ANNETTE :  
BERNATZKY, MARK GALAN, STEVEN :  
GRECO, SUSAN BLUBERG, GLEN :  
BLUBERG, DANIEL RECH, :  
MOHAMMED HASHMI, ABDUL :  
SATTER, MAJEED DABBI, ROBERT :  
DeLAURENTIS and FRANK :  
DeLAURENTIS, :  
:  
Plaintiffs, :  
vs. :  
:  
JAVA'S BREWIN DEVELOPMENT, :  
INC., CHRISTOPHER T. :  
GREGORIS, DENNIS MASON and :  
FRANCHISES UNLIMITED, INC., :  
:  
Defendants. :  
\_\_\_\_\_

State Supreme Court  
Index No. 6857/08

Case No.  
Civil Action

NOTICE OF REMOVAL  
PURSUANT TO 28 U.S.C.  
1441(b) AND L.C.R. 81.1

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE, that defendants JAVA'S BREWIN  
DEVELOPMENT, INC., CHRISTOPHER T. GREGORIS, DENNIS MASON and  
FRANCHISES UNLIMITED, INC., by and through their attorneys,  
Klafter & Mason, L.L.C., hereby remove to this Court the state

KLAFTER & MASON, L.L.C.  
195 Route 9 South, Suite 204  
Manalapan, New Jersey 07726  
(732) 358-2028 • Fax: (732) 358-2029

**KLAFTER & MASON, L.L.C.**  
195 Route 9 South, Suite 204  
Manalapan, New Jersey 07726  
(732) 358-2028 · Fax: (732) 358-2029

court action described below.

1. On or about March 4, 2008, plaintiffs Dino DiPietro, Lisa DiPietro, Kenneth Bernatzky, Annette Bernatzky, Mark Galan, Steven Greco, Susan Bluberg, Glen Bluberg, Daniel Rech, Mohammed Hashmi, Abdul Satter, Majeed Dabbi, Robert DeLaurentis and Frank DeLaurentis commenced an action in the New York State Supreme Court, County of Kings, Index Number 6857/08. On or about March 26, 2008, plaintiffs filed an amended complaint in this matter, a true and correct copy of which is annexed hereto.

2. On March 21, 2008, defendant Dennis Mason was served with the original summons and complaint. No other defendant was served with the original complaint. On April 7, 2008, defendants' counsel acknowledged service of the amended complaint on behalf of all defendants.

3. This action is a civil action which may be removed to this Court pursuant to 28 U.S.C. §1441(b) in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

4. The state court where this action was originally filed is located in Brooklyn, New York, which is this judicial district as required by 28 U.S.C. §1441(a).

5. At the time this action was commenced, plaintiffs:

**KLAFTER & MASON, L.L.C.**  
195 Route 9 South, Suite 204  
Manalapan, New Jersey 07726  
(732) 358-2028 • Fax: (732) 358-2029

- a. Dino DiPietro and Lisa DiPietro were and still are residents of Smithtown, New York;
  - b. Susan Bluberg and Glen Bluberg were and still are residents of Commack, New York;
  - c. Kenneth Bernatzky and Annette Bernatzky were and still are residents of Lindenhurst, New York;
  - d. Mark Galan was and still is a resident of Islip, New York;
  - e. Steven Greco was and still is a resident of Centereach, New York;
  - f. Robert DeLaurentis was and still is a resident of College Point, New York;
  - g. Frank DeLaurentis was and still is a resident of Whitestone, New York;
  - h. Daniel Rech was and still is a resident of Brooklyn, New York;
  - i. Mohammed Hashmi was and still is a resident of Queens, New York;
  - j. Abdul Satter was and still is a resident of Staten Island, New York; and,
  - k. Majeed Dabbi was and still is a resident of Staten Island, New York.
6. At the time this action was commenced, defendant

Java's Brewin Development, Inc. was and still is a Massachusetts corporation with its principal place of business located in Massachusetts.

7. At the time this action was commenced, defendant Christopher T. Gregoris was and still is a citizen of the Commonwealth of Massachusetts.

8. At the time this action was commenced, defendant Dennis Mason was and still is a citizen of the State of New Jersey.

9. At the time this action was commenced, defendant Franchises Unlimited, Inc. was and still is a New Jersey corporation with its principal place of business located in New Jersey.

10. The amended complaint in this action seeks damages for, among other things, violations of New York General Business Law §§680-695 (the New York Franchise Sales Act) in an amount in excess of \$75,000.00.

11. This Notice of Removal is timely as it is being filed within thirty (30) days of service and initial receipt of the summons and complaint.

12. All defendants consent to the removal of this action to this Court.

13. Accordingly, the statutory requirements having been met, this action is properly removed to this Court.

**KLAFTER & MASON, L.L.C.**  
195 Route 9 South, Suite 204  
Manalapan, New Jersey 07726  
(732) 358-2028 • Fax: (732) 358-2029

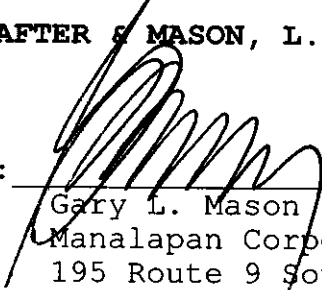
14. Promptly upon the filing of this Notice of Removal, defendants will file a copy of this Notice with the Clerk of the State Court, and is giving written notice of this removal to plaintiffs' counsel

**WHEREFORE**, defendants respectfully request that the aforementioned civil action commenced against them be removed to this Court for all future proceedings.

Dated: Manalapan, New Jersey  
April 17, 2008

**KLAFTER & MASON, L.L.C.**

BY: \_\_\_\_\_

  
Gary L. Mason  
Manalapan Corporate Plaza  
195 Route 9 South  
Suite 204  
Manalapan, New Jersey 07726  
P: (732) 358-2028  
F: (732) 358-2029  
[glm@kmrslaw.com](mailto:glm@kmrslaw.com)  
Attorneys for Defendants

**KLAFTER & MASON, L.L.C.**  
195 Route 9 South, Suite 204  
Manalapan, New Jersey 07726  
(732) 358-2028 • Fax: (732) 358-2029

cc: David S. Paris, Esq.  
Marks & Klein, LLP  
63 Riverside Avenue  
Red Bank, NJ 07701  
Attorneys for Plaintiffs

**SUPREME COURT OF THE STATE OF  
NEW YORK COUNTY OF KINGS**

DINO DIPIETRO, a citizen of the State of New York, LISA DIPIETRO, a citizen of the State of New York KENNETH BERNATZKY, a citizen of the State of New York, ANNETTE BERNATZKY, a citizen of the State of New York, MARK GALAN, a citizen of the State of New, STEVEN GRECO, a citizen of the State of New York, SUSAN BLUBERG, a citizen of the State of New York, GLEN BLUBERG, a citizen of the State of New, DANIEL RECH, a citizen of the state of New York, MOHAMMED HASHMI, a citizen of the State of New York, ABDUL SATTER, a citizen of the State of New York, MAJEED DABBI, a citizen of the State of New York, ROBERT DELAURENTIS, a citizen of the State of New York and FRANK DELAURENTIS, a citizen of the State of New York,

Plaintiffs,

vs.

JAVA'S BREWIN DEVELOPMENT, INC. a Massachusetts Corporation, CHRISTOPHER T. GREGORIS, a citizen of the Commonwealth of Massachusetts, DENNIS MASON, a citizen of the State of New Jersey, and FRANCHISES UNLIMITED, INC., a New Jersey Corporation

Defendants.

**AMENDED COMPLAINT  
AND JURY DEMAND**

**Index No.: 6857/08**

Plaintiffs, Dino DiPietro, Lisa DiPietro, Kenneth Bernatzky, Annette Bernatzky, Mark Galan, Steven Greco, Susan Bluberg, Glen Bluberg, Daniel Rech, Mohammed Hashmi, Abdul

Satter, Majeed Dabbi, Robert DeLaurentis, and Frank DeLaurentis (collectively “Plaintiffs” or individually by last name), by and for their Amended Complaint against Defendants Java’s Brewing Development, Inc. (“Java’s Brewin”), Christopher T. Gregoris (“Gregoris”), Dennis Mason (“Mason”), and Franchises Unlimited, Inc. (“FUI”) (collectively “Defendants”), respectfully allege as follows:

**INTRODUCTION AND NATURE OF THIS ACTION**

1. This lawsuit arises from the illicit scheme carried out by Java’s Brewin, Christopher Gregoris, and Dennis Mason, through which they extracted significant sums of money from Plaintiffs by employing fraud and deception to induce Plaintiffs into purchasing Java’s Brewin franchises in the state of New York.

2. In this case, Java’s Brewin, through its agents Christopher Gregoris and Dennis Mason, sold Plaintiffs their respective Java’s Brewin franchises during a time that *Java’s Brewin’ was not properly registered to offer or sell franchises within the state of New York.*

3. Defendants’ conduct is in clear violation of New York General Business Law §§ 680-695 (the “New York Franchise Sales Act” or “NYFSA”).

4. The NYFSA is a comprehensive statutory scheme that attempts to prevent franchise sales abuse by requiring presale disclosure through a prospectus or disclosure document that is required to be registered with the State of New York.

5. As Defendants were fully aware of Java’s non-compliance with New York’s statutory franchise registration requirement at the time the subject franchises were sold, the sale of those franchises to Plaintiffs was indisputably willful.

6. In light of the foregoing, Plaintiffs each seek rescission of their respective Franchise Agreements with interest at the statutory six percent (6%) and attorneys fees and costs for Defendants' willful violations of NYFSA.

### THE PARTIES

7. Plaintiff Dino DiPietro ("DiPietro") and his wife Plaintiff Lisa DiPietro are residents of Smithtown, New York who signed a Java's Brewin franchise agreement and invested significant amounts of money to open and operate a Java's Brewin franchise in Jamaica, New York. The DiPietros also invested additional money to purchase the rights to open two other Java's Brewin franchises within Suffolk County New York. To date, the DiPietros have been unable to open either of their two Suffolk County Java's Brewin franchise stores.

8. Plaintiff Susan Bluberg and her husband Plaintiff Glen Bluberg ("the Blubergs") are residents of Commack, New York who signed a Java's Brewin franchise agreement and invested significant amounts of money to purchase the rights to open three (3) Java's Brewin franchises in Suffolk County, New York. To date, the Blubergs have been unable to open any of their three Suffolk County Java's Brewin franchise stores.

9. Plaintiff Kenneth Bernatzky ("Bernatzky") and his wife Plaintiff Annette Bernatzky are residents of Lindenhurst, New York who signed a Java's Brewin franchise agreement and invested significant amounts of money to purchase the rights to open and operate one (1) Java's Brewin franchise in Huntington Station, New York.

10. Plaintiff Mark Galan ("Galan") and his business partner Steven Greco ("Greco") are Residents of Islip, New York and Centereach, New York respectively, who signed a Java's Brewin franchise agreement and invested significant amounts of money to open and operate four (4) Java's Brewin franchises in New York. Galan and Greco opened and operated one of their



four franchises in North Babylon, New York. To date, the Galan and Greco have been unable to open any of their three remaining New York Java's Brewin franchise stores.

11. Plaintiff Robert DeLaurentis and his brother Frank DeLaurentis ("the DeLaurentis brothers") are residents of College Point, New York and Whitestone, New York, respectively, who signed a Java's Brewin franchise agreement and invested significant amounts of money to purchase the rights to open and operate five (5) Java's Brewin franchises in New York. To date, the DeLaurentis brothers have been unable to open any of their five New York Java's Brewin franchise stores

12. Plaintiffs Daniel Rech, Mohammed Hashmi, Abdul Satter, and Majeed Dabbi, (the "Rech Defendants") are business partners and Residents of Brooklyn, New York, Queens, New York and Staten Island, New York, respectively, who signed a Java's Brewin franchise agreement and invested significant amounts of money to open and operate four (4) Java's Brewin franchises in New York. To date, the Rech partners have been unable to open any of their New York Java's Brewin franchise stores.

13. Defendant Java's Brewin Development, Inc. ("Java's Brewin"), is, upon information and belief, a Massachusetts corporation with its principal business address at 16 Acton Street, Watertown, MA 02472. Java's Brewin conducts substantial business within the state of New York, including but not limited to the sale of its franchises. Java's Brewin promotes its franchises as a means to achieve the "American Dream" of financial success and prosperity.

14. Defendant Christopher T. Gregoris ("Gregoris") is, or was, upon information and belief, the President of Java's Brewin who had direct communications with Plaintiffs in the state

of New York and assisted Java's Brewin in effectuating the deceptive scheme to illicitly and knowingly sell franchises while not registered to do so within the state.

15. Defendant Dennis Mason is, upon information and belief, a resident of New Jersey, and is or was a Java's Brewin employee, and/or agent of Java's Brewin, who had direct communications with Plaintiffs in the state of New York in effectuating the deceptive scheme to illicitly and knowingly sell franchises while not registered to do so within the state. Upon further information and belief, at all times relevant to this action, Defendant Mason engaged in the complained of fraud through his corporate entity, Defendant Franchises Unlimited, Inc.. Defendant Mason is the President and sole shareholder of FUI.

16. Defendant Franchises Unlimited, Inc., is, upon information and belief, a New Jersey Corporation formed for the purposes of selling franchises and offering consulting services to franchise systems.

### STATEMENT OF FACTS

#### **A. Java's Brewin, Through Its Agents and Employees, Willfully and Knowingly Sold Franchises in the State of New York Without Being Registered to Do So**

17. Between the years 2005 and 2006, Java's Brewin, through its agents Christopher T. Gregoris and Dennis Mason, employed a fraudulent scheme to sell franchises to would-be franchisees throughout the state of New York, without being properly registered to do so pursuant to New York's statutory franchise registration requirements.

18. Java's Brewin submitted its initial application for registration in the state of New York to the Office of the Attorney General ("NYAG") on October 31, 2002. The application was accepted for filing on November 15, 2002. (See Letter from Office of New York Attorney General dated November 7, 2007, attached hereto as Exhibit "A").

19. Java's Brewin submitted its first amendment to its registration materials on May 5, 2003. That amendment was accepted for filing on May 27, 2003. Id.

20. Java's Brewin's next amendment would have been due on May 1, 2004 but was never filed. Id. *Java's failure to submit the above referenced amendment to the NYAG caused its registration in the state of New York to lapse. Accordingly, the sale of any franchises in the state of New York after May 1, 2004 was in violation of the NYFSA.*

21. Java's Brewin submitted a new initial application for registration to the NYAG on or about July 14, 2005. That application was withdrawn before it was ever reviewed or approved. Id.

22. Java's Brewin's latest application was received by the NYAG on July 16, 2007. The NYAG reviewed the application and did not accept it. Instead, the NYAG sent Java's correspondence containing comments regarding a certain deficiency in the UFOC the franchisor submitted with its most recent application. Id.

23. The deficiency in Java's UFOC was the omission of a material risk factor regarding Java's bleak financial statements. (See Letter from Office of New York Attorney General dated August 15, 2007, attached hereto as Exhibit "B") Specifically, according to the comments offered by the NYAG, "The franchisor's latest audited balance sheet show a negative net worth in the amount of \$103,390 and negative working capital in the amount of \$87,973." Id.

24. Given the unfavorable condition of Java's finances, the NYAG also required Java's to include a warning with its financial disclosure, advising that "a prospective franchisee should carefully review the financial statements when deciding whether to purchase a franchise." Id. To date, Java's Brewin has not submitted a response to those comments. Id.

25. In light of the foregoing, it is indisputable that Java's Brewin *has not been properly registered to sell franchises in the state of New York since May 1, 2004.*

26. Still, between 2005 and 2006, Java's Brewin, through its agents Christopher Gregoris and Dennis Mason, willfully flouted the state's statutory registration requirements and sold franchises in New York to would-be franchisees including the Plaintiffs in this case.

**B. Java's Brewin Failed to Provide Any of the Support or Training That Was Promised to Plaintiffs, and Upon Which Plaintiffs Relied In Deciding to Purchase Their Java's Franchises**

27. Java's Brewin, through its agents Christopher Gregoris and Dennis Mason, made a number of pre-contractual representations and promises to the Defendants, as part of their "sales pitch" to induce Plaintiffs to invest in their respective Java's franchises.

28. Included among the promises and representations made by Defendants was the guarantee of significant support and training that was to be provided by Java's "expert staff," in connection with site-selection and franchise operations.

29. Plaintiffs relied on these representations when making the determination to invest their hard-earned money in their Java's franchises.

30. As detailed further below, none of the Plaintiffs in this action received any of the promised site-selection assistance, and accordingly, were unable to find suitable franchise locations. Most of them were unable to open their stores. Still, in those cases, Java's kept the significant franchise fees paid by these individuals.

31. Certain of the Plaintiffs, however, found their own locations in the absence of the site-selection assistance that was promised to them. Unfortunately for these Plaintiffs, once they opened their stores they continued to hemorrhage money because they never received the

38. Mason made similar misrepresentations to Plaintiff Bernatzky, claiming that the initial build out of his Java's store would not exceed \$150,000. Mason's "projections" could not have been more egregiously understated, as the initial build out and construction costs of Bernatzky's store nearly exceeded \$200,000.

39. Mason provided each of the Plaintiffs with the same types of fraudulent misinformation as discussed above, as a means to induce each Plaintiff into purchasing their respective Java's franchises.

40. Unfortunately for the Plaintiffs, none of the information that Mason provided proved true. In fact, none of the Plaintiffs received any of the "expert" site selection assistance promised by Mason, as is evidenced by the fact that only two of the six franchisee Plaintiffs in this action even opened their Java's stores.

41. Moreover, none Mason's representations regarding training and support or sales and overhead projections came remotely within the realm of reality, as is evidenced by the fact that the two franchisees who did open and operate (DeLaurentis and Bernatzky) were forced to close their stores after suffering substantial financial losses.

42. In light of Defendant Mason's integral involvement in the scheme to defraud Plaintiffs in this action, and the complete insignificance and irrelevance of the corporate shell which he purports to hide behind (FUI), Defendant Mason should be held personally liable in this action.

**D. Plaintiffs Each Were Sold Java's Brewin Franchises In the State of New York at a Time When Java's Brewin Was Not Properly Registered to Sell Franchises In the State.**

The DiPietros

43. Java's Brewin, through its agents Christopher Gregoris and Dennis Mason, sold Plaintiffs Dino and Lisa DiPietro the rights to open three (3) Java's Brewin franchises in the State of New York.

44. The DiPietros executed their franchise agreement for the rights to open their Java's Brewin franchises in the state of New York on or about August 3, 2005.

45. Pursuant to their agreement the DiPietros were required to pay approximately \$25,000 for the rights to open one franchise in Jamaica, New York, and approximately \$10,000 for the rights to open two additional franchises at locations to be determined within Suffolk County. The DiPietros found their Jamaica location on their own, without being provided any of the site-selection assistance promised by the Defendants. Because of the absence of any of the site-selection assistance promised to them by Defendants, the DiPietros were never able to find suitable locations to open their remaining two Java's franchises.

46. The DiPietros opened and operated their Jamaica, New York Java's franchise and to do so, were required to the following expenditures: approximately \$65,000 to build out their store, approximately \$45,000 for equipment and approximately \$20,000 for a lease security deposit. The DiPietros also incurred \$100,000 in operating expenses. Because the DiPietros were not provided any of the site-selection support, operational support or training that was promised to them by the Defendants, their store operated at a loss from the day the doors opened. Consequently, the DiPietros have sustained significant financial damage in an amount totaling approximately \$300,000.

47. At the time the DiPietros were sold their Java's Brewin franchises, Java's Brewin was not properly registered to sell franchises in the state of New York pursuant to the NFSAs.

48. Java's Brewin and its agents Christopher Gregoris and Dennis Mason knew that Java's Brewin was not properly registered to sell franchises in New York at the time they sold the DiPietros' their franchises. Accordingly, Defendants' conduct was indisputably willful.

#### The Blubergs

49. Java's Brewin, through its agents Christopher Gregoris and Dennis Mason, sold Plaintiffs Sue and Glen Bluberg the rights to open three (3) Java's Brewin franchises in the State of New York.

50. The Blubergs executed their franchise agreement for the rights to open their Java's Brewin franchises in the state of New York on or about July 2, 2005.

51. Pursuant to their agreement, the Blubergs were required to pay approximately \$40,000 for the rights to three New York Java's franchises and the associated legal fees. Because the Blubergs were not provided the site-selection support that was promised to them by the Defendants, they were never able to obtain suitable locations for their Java's franchises and never opened a store. Consequently, the Blubergs have sustained significant financial damage in an amount totaling approximately \$40,000.

52. At the time the Blubergs were sold their Java's Brewin franchises, Java's Brewin was not properly registered to sell franchises in the state of New York pursuant to the NFSA.

53. Java's Brewin and its agents Christopher Gregoris and Dennis Mason knew that Java's Brewin was not properly registered to sell franchises in New York at the time they sold the Blubergs' their franchises. Accordingly, Defendants' conduct was indisputably willful.

location for one of their franchises in North Babylon, New York, without of the site-selection assistance promised by the Defendants.

67. Galan and Greco opened and operated their North Babylon store, and to do so, were required make expenditures totaling approximately \$280,000 for the build-out of their store and equipment. Because Galan and Greco were not provided any of the site-selection support, operational support or training that was promised to them by the Defendants, their store operated at a loss from the day the doors opened. Consequently, Galan and Greco have sustained significant financial damage. Consequently, Galan and Greco have sustained significant financial damage in an amount totaling approximately \$300,000.

68. At the time Galan and Greco were sold their Java's Brewin franchises, Java's Brewin was not properly registered to sell franchises in the state of New York pursuant to the NFSA.

69. Java's Brewin and its agents Christopher Gregoris and Dennis Mason knew that Java's Brewin was not properly registered to sell franchises in New York at the time they sold Galan and Greco their franchises. Accordingly, Defendants' conduct was indisputably willful.

#### The Bernatzkys

70. Java's Brewin, through its agents Christopher Gregoris and Dennis Mason, sold the Bernatzkys the right to open one (1) Java's Brewin franchise in the State of New York.

71. The Bernatzkys executed their franchise agreement for the rights to open their Java's Brewin franchise in the state of New York in or about September 2006.

72. Pursuant to their agreement, the Bernatzkys were required to pay approximately \$25,000 for the rights to open their Java's franchise in New York. The Bernatzkys found a location for their store in Huntington Station, New York.



73. The Bernatzkys opened and operated their New York Java's franchise in Huntington Station, and to do so, were required make expenditures totaling approximately \$220,000 for the build-out of their store and equipment. Because the Bernatzkys were not provided any of the operational support or training that was promised to them by the Defendants, their store operated at a loss from the day the doors opened and the Bernatzky's sustained significant financial damage. Consequently, the Bernatzkys have sustained significant financial damage in an amount totaling approximately \$250,000.

74. At the time the Bernatzkys were sold their Java's Brewin franchises, Java's Brewin was not properly registered to sell franchises in the state of New York pursuant to the NFSA.

75. Java's Brewin and its agents Christopher Gregoris and Dennis Mason knew that Java's Brewin was not properly registered to sell franchises in New York at the time they sold the Bernatzkys their franchises. Accordingly, Defendants' conduct was indisputably willful.

**COUNT ONE**  
**VIOLATION OF N.Y GEN BUSINESS LAW §§ 680-695**  
**("New York Franchise Sales Act")**

76. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as though fully set forth at length.

77. The New York Franchise Sales Act ("the Act") establishes a comprehensive scheme of pre-sale disclosures by means of a prospectus registered with the Attorney General and post-sale redress of franchise sales fraud by means of Attorney General-initiated prosecution *and private actions commenced by franchisees.*

78. Corporate Defendant Java's Brewin, through its agents and employees, individual Defendants Christopher Gregoris and Dennis Mason, offered and sold Plaintiffs their respective Java's Brewin franchises in the State of New York, *at a time that it was not properly registered to do so with the Office of the Attorney General.*

79. Individual Defendants Gregoris and Mason, acting under the control of or on behalf of Java's Brewin, materially aided in the acts and transactions that gave rise to the violations of the Act.

80. Specifically, Gregoris and Mason were instrumental in providing the Plaintiffs with "information" regarding the Java's franchise system, which was entirely comprised of material misrepresentations and omissions, as a means to induce Plaintiffs into investing in their Java's franchises.

81. Plaintiffs the DiPietros, the Bernatzkys, and Galan and Greco made additional investments in their Java's Brewin franchises, which included, without limitation: the significant costs for substantial equipment and fixtures.

82. At no time prior to the institution of this lawsuit did any of the Plaintiffs receive a written offer from Defendants to refund the consideration paid for their respective franchises.

**WHEREFORE**, Plaintiffs demand that judgment be entered against all Defendants, jointly and severally, Ordering:

- a. Rescission of their respective franchise agreements with interest at six percent per year from the date of purchase;
- b. An award of monetary damages, as appropriate;
- c. An award of reasonable attorney's fees, interest, and costs; and
- d. Such other relief as this Court finds reasonable and proper.

**COUNT TWO**  
**VIOLATION OF N.Y GEN BUSINESS LAW §§ 683(9)(a)**  
**("New York Franchise Sales Act")**

83. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as though fully set forth at length.

84. The New York Franchise Sales Act imposes an obligation on the franchisor to promptly amend a franchise offering circular to disclose any material changes to the facts set forth in the document.

85. The failure to formally and timely register and/or notify the New York Attorney General of such amendments will cause a franchise registration to lapse.

86. Since May 5, 2003, Defendant Java's Brewin has failed to comply with its statutory obligations to amend its UFOC upon the occurrence of any material changes to the facts set forth within the document.

87. As a result of this non-compliance, Java's initial registration, filed in 2003, has lapsed.

88. Notwithstanding its non-compliance with the amendment requirements promulgated under the Act, Java's Brewin, through Gregoris and Mason, continued to offer and sell franchises, and in fact willfully offered and sold franchises to the Plaintiffs.

89. Individual Defendants Gregoris and Mason materially aided in the acts and transactions that gave rise to the violations of the Act.

90. At no time contemporaneously or following the sale of its franchises to the Plaintiffs did Java's Brewin inform any of the Plaintiffs that an event requiring the amendment of its UFOC had occurred or that such amendment had been submitted.

91. At no time contemporaneously or following the sale of its franchises to the Plaintiffs did Java's Brewin provide any of the Plaintiffs with an amended version of its UFOC.

92. At no time contemporaneously or following the sale of its franchises to the Plaintiffs did Java's Brewin afford any of the Plaintiffs a ten-day period within which they could rescind their franchise agreements.

**WHEREFORE**, Plaintiffs demand that judgment be entered against all Defendants, jointly and severally, Ordering:

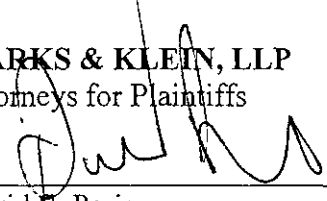
- a. Rescission of their respective franchise agreements with interest at six percent (6%) per year from the date of purchase;
- b. An award of monetary damages, as appropriate;
- c. An award of reasonable attorney's fees, interest, and costs; and
- d. Such other relief as this Court finds reasonable and proper

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: March 17, 2008

**MARKS & KLEIN, LLP**  
Attorneys for Plaintiffs

  
\_\_\_\_\_  
David S. Paris  
63 Riverside Avenue  
Red Bank, N.J. 07701  
Tel: (732) 747-7100

**DESIGNATION OF TRIAL COUNSEL**

David S. Paris, Esq. is hereby designated as trial counsel for Plaintiffs in the within matter.

**MARKS & KLEIN, LLP**  
Attorneys for Plaintiffs

March 17, 2008

By: 

David S. Paris

**EXHIBIT A**

---



ANDREW M. CUOMO  
Attorney General

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC CORNGOLD  
Executive Deputy Attorney General  
Division of Economic Justice

MATTHEW J. GAUL  
Bureau Chief  
Investor Protection Bureau

(212) 416-8236

November 6, 2007

David Paris  
Marks & Klein, LLP  
63 Riverside Avenue  
Red Bank, NJ 07701

Re: Java's Brewin' Development, Inc.

Dear Mr. Paris:

We have your correspondence dated October 26, 2007 requesting franchise registration information concerning Java's Brewin'. According to our computer database, their initial application for registration was received on October 31, 2002 and was accepted for filing on November 15, 2002. The first amendment was received on May 5, 2003 and was accepted for filing on May 27, 2003. Their next amendment would have been due on May 1, 2004, but was never filed..

A new initial application was received on July 14, 2005, but was withdrawn before it was reviewed. Their latest application was received on July 16, 2007, and the enclosed comment letter was issued. To date, a response has not been received.

Very truly yours,

A handwritten signature in cursive script that reads "Barbara Lasoff".

Barbara Lasoff  
Principal Accountant

Enclosure

**EXHIBIT B**





ANDREW M. CUOMO  
Attorney General

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
(212) 416-8236

ERIC CORNGOLD  
Executive Deputy Attorney General  
Division of Economic Justice

MATTHEW J. GAUL  
Bureau Chief  
Investor Protection Bureau

August 15, 2007

Chris Gregoris, President  
Java's Brewin' Development Corp.  
6 Acton Street  
Watertown, MA 02472

Re: Franchise Registration Application of Java's Brewin' Development Corp.,  
File No. 07-0210

Dear Mr. Gregoris:

The franchise offering circular and accompanying materials of the above franchisor have been reviewed and the following comments are noted:

1. Cover page
  - a. The following should be included under Risk Factors:  
THE FRANCHISOR'S LATEST AUDITED BALANCE SHEET SHOW A NEGATIVE NET WORTH IN THE AMOUNT OF \$103,390 AND NEGATIVE WORKING CAPITAL IN THE AMOUNT OF \$87,973. A PROSPECTIVE FRANCHISEE SHOULD CAREFULLY REVIEW THE FINANCIAL STATEMENTS WHEN DECIDING WHETHER TO PURCHASE A FRANCHISE.
  - b. The Effective Date should be left blank.
  - c. In the upper-left hand corner, please include a sample of the franchisor's primary business logotype.
  - d. The address and phone number should be change to the one that appears on the application form..This should be changed throughout the document as well.
2. Item 2  
This item should included factual information only – each person's principal occupations and employers for the past 5 years.
3. New York Addendum  
The following items are New York specific and should be included in an addendum:
  - a. Item 3 - The exact language prescribed by Section 200.2(c)-3 must be included.
  - b. Item 4 - The exact language prescribed by Section 200.2(c)-4 must be included.
  - c. Item 5 - Describe the purpose for which the fee will be used; Section 200.2(c)-5A.
  - d. Item 17 - The following should appear in the Summary column opposite provision d.:  
"The franchisee may terminate the agreement upon any grounds available by law."
4. Item 7
  - a. Please disclose the amount of the royalty for years 4-10.
  - b. Provide an explanatory note 5 for the audit cost; disclose the circumstances under which the audit would be necessary.

Re: Java's Brewin' Development Corp.

Page 2  
August 15, 2007

5. Item 11

Disclose the experience that the training instructors have had with the franchisor.

6. Item 12

Describe the minimum territory to be granted to a franchisee.

7. Item 20

Please include the separate tabular charts for franchised units, company-owned units and projected openings as prescribed by the enclosed Item 20. Provide an exhibit as required by paragraph E.

8. Item 21

- a. Submit the accountant's consent to the use of the audited financial statements.
- b. An unaudited balance sheet and profit and loss statement as of a date within 90 days of the date of application must be included. Such a date would be April 17, 2007 or later.
- c. Correct the reference to the financial statements in item 21 on page 23.
- d. Please explain why there was a decrease in royalty fees from 2005 to 2006, and why the amount of royalties collected for 2006 was only \$3,449.

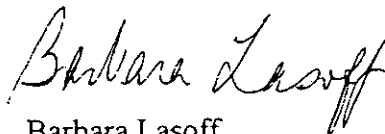
9. Exhibit 2

The Agent for Service of Process in New York is the Secretary of State, 41 State Street, Albany, NY 12231. Please correct this item and complete the enclosed form.

10. Please provide an affidavit, under the penalty of perjury, signed by Java's Brewin' Development, Inc.'s president, Christopher Gregoris, stating within the text of the affidavit (and not referring to a list or other exhibit) the name and address of each New York domiciliary that the Company or its affiliate ever offered or sold a franchise to, and those that were offered or sold in the state of New York, regardless of the domiciliary of the franchisee. Submit a copy of each agreement.

Submit two copies of the corrected offering circular, one of which is redlined to show changes.

Very truly yours,



Barbara Lasoff  
Principal Accountant



JS 44 (Rev. 12/07)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

# 08-1620

#### I. (a) PLAINTIFFS

Dino and Lisa DiPietro, et al

#### DEFENDANTS

Java's Brewin Development, Inc., et al

(b) County of Residence of First Listed Plaintiff Kings  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Foreign  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

David S. Paris, Esq., 55 Wall St., New York, NY 10005

Attorneys (if known)

Gary L. Mason, Esq., 195 Rt. 9, Suite 204, Manalapan, NJ 07764

#### II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

#### III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                            |                                       |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                                   |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

#### IV. NATURE OF SUIT (Place an "X" in One Box Only)

- |   |  |   |  |  |  |
|---|--|---|--|--|--|
| <ul style="list-style-type: none"> <li><input type="checkbox"/> 110 Insurance</li> <li><input type="checkbox"/> 120 Marine</li> <li><input type="checkbox"/> 130 Miller Act</li> <li><input type="checkbox"/> 140 Negotiable Instrument</li> <li><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</li> <li><input type="checkbox"/> 151 Medicare Act</li> <li><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)</li> <li><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</li> <li><input type="checkbox"/> 160 Stockholders' Suits</li> <li><input type="checkbox"/> 190 Other Contract</li> <li><input type="checkbox"/> 195 Contract Product Liability</li> <li><input checked="" type="checkbox"/> 196 Franchise</li> </ul> | <p><b>PERSONAL INJURY</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 310 Airplane</li> <li><input type="checkbox"/> 315 Airplane Product Liability</li> <li><input type="checkbox"/> 320 Assault, Libel &amp; Slander</li> <li><input type="checkbox"/> 330 Federal Employers' Liability</li> <li><input type="checkbox"/> 340 Marine</li> <li><input type="checkbox"/> 345 Marine Product Liability</li> <li><input type="checkbox"/> 350 Motor Vehicle</li> <li><input type="checkbox"/> 355 Motor Vehicle Product Liability</li> <li><input type="checkbox"/> 360 Other Personal Injury</li> </ul> | <p><b>PERSONAL INJURY</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 362 Personal Injury - Med. Malpractice</li> <li><input type="checkbox"/> 365 Personal Injury - Product Liability</li> <li><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</li> </ul> <p><b>PERSONAL PROPERTY</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> 370 Other Fraud</li> <li><input type="checkbox"/> 371 Truth in Lending</li> <li><input type="checkbox"/> 380 Other Personal Property Damage</li> <li><input type="checkbox"/> 385 Property Damage Product Liability</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> 610 Agriculture</li> <li><input type="checkbox"/> 620 Other Food &amp; Drug</li> <li><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</li> <li><input type="checkbox"/> 630 Liquor Laws</li> <li><input type="checkbox"/> 640 R.R. &amp; Truck</li> <li><input type="checkbox"/> 650 Airline Regs.</li> <li><input type="checkbox"/> 660 Occupational Safety/Health</li> <li><input type="checkbox"/> 690 Other</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> 422 Appeal 28 USC 158</li> <li><input type="checkbox"/> 423 Withdrawal 28 USC 157</li> <li><input type="checkbox"/> 820 Copyrights</li> <li><input type="checkbox"/> 830 Patent</li> <li><input type="checkbox"/> 840 Trademark</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> 400 State Reapportionment</li> <li><input type="checkbox"/> 410 Arbitration</li> <li><input type="checkbox"/> 430 Banks and Banking</li> <li><input type="checkbox"/> 450 Commerce</li> <li><input type="checkbox"/> 460 Deportation</li> <li><input type="checkbox"/> 470 Racketeer Influence and Corrupt Organizations</li> <li><input type="checkbox"/> 480 Consumer Credit</li> <li><input type="checkbox"/> 490 Cable/Sat TV</li> <li><input type="checkbox"/> 810 Selective Service</li> <li><input type="checkbox"/> 850 Securities/Commodities/Exchange</li> <li><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</li> <li><input type="checkbox"/> 890 Other Statutory Actions</li> <li><input type="checkbox"/> 891 Agricultural Act</li> <li><input type="checkbox"/> 892 Economic Stabilization Act</li> <li><input type="checkbox"/> 893 Environmental Matters</li> <li><input type="checkbox"/> 894 Energy Allocation Act</li> <li><input type="checkbox"/> 895 Freedom of Information Act</li> <li><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</li> <li><input type="checkbox"/> 950 Constitutionality of State Statutes</li> </ul> |
|---|--|---|--|--|--|

#### V. ORIGIN

- (Place an "X" in One Box Only)
- 1 Original Proceeding
  - 2 Removed from State Court
  - 3 Remanded from Appellate Court
  - 4 Reinstated or Reopened
  - 5 Transferred from another district (specify)
  - 6 Multidistrict Litigation
  - 7 Appeal to District Judge from Magistrate Judgment

#### VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

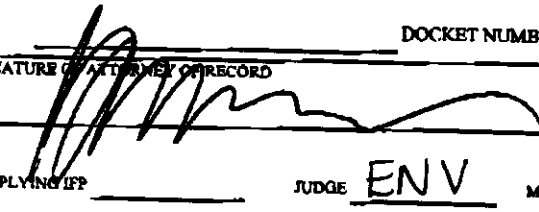
Brief description of cause:  
**Claims for breach of contract and rescission under franchise practices act**

#### VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
- DEMAND \$ \_\_\_\_\_
- CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

#### VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 04/18/2008 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFF \_\_\_\_\_ JUDGE ENV MAG. JUDGE MDG

1620

ARBITRATION CERTIFICATION

I, Gary L. Mason, Esq., counsel for defendants do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs. Relief other than monetary damages is sought.

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks: none

Please refer to NY-E Division of Business Rule 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District of New York removed from a New York State court located in Nassau or Suffolk County: No

2.) If you answered "no" above:

a.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No

b.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No [checked]

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes [checked] (If yes, please explain) No

See Affidavit submitted in support of pro hac vice motion

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

ATTORNEY BAR CODE: GM4835

E-MAIL Address: glm@kmrslaw.com

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures (EFP)", and consent to the electronic service of all papers.

Signature: [Handwritten Signature]