



June 2013
Issue 6

STATE OWNER NEWSLETTER

HB Finance Online

Our Heaven's Best Web Site has many tools that can help you manage the City Operators in your state, but I am not sure all of our State Owners know how to use the site. At the risk of insulting your intelligence, I would like to help you understand some of the basics. As a State Owner, your user name and password allows you to see things that are not available to your City Operators.

Click on Operators only at the bottom of the heavensbest.com home page. Sign in with your username and password. After you click the State Owners tab on the top of the page, scroll down to HB Finance Online. This will open up a menu to see the monthly reports, my commissions, Operators orders, product orders, or product usage. These reports will allow you to compare what all Operators use in comparison with each other. I would like each of you to review this information before our next state owner webinar.

If any of you need special help in understanding these reports, please contact Cody at the Corporate Office within the next two weeks.

Living by the Rules

I am concerned that not all of our City Operators are living according to the rules spelled out in our contracts. I think that we need to reemphasize the importance of living up all requirements of the contract. I have included a little section in this month's City Owner newsletter regarding the exclusive right area. I will devote a section in the upcoming newsletters to other aspects of the contract that I feel need to be reemphasized. The topic for the July Newsletter will be using only our products.

Each State Owner will play a big part in monitoring and helping to enforce the need for every City Owner to purchase all products, equipment, and supplies through Heaven's Best. The strict enforcement of the contract will result in some Operators having their Heaven's Best Franchise terminated.

Recently the courts have ruled favorably on the side of Franchisors who terminate a Franchisee who then continues to use the registered trademark of the Franchisor. We have included an example below of such a court ruling.

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Something franchisees must know: Franchisees that continue to use their franchisors' registered trademarks after their franchise agreements have been properly terminated by their franchisors could face crippling damage awards. Under the Federal Lanham Act, courts may award an injured franchisor "treble damages" -three times the amount of damages actually suffered-for willful and knowing trademark infringement, and infringers may also be required to pay the trademark owner's attorneys fees.

In Choice Hotels Int'l, Inc. v. Bhakta, a federal district court in Corpus Christi, Texas recently held that Choice Hotels International, Inc. ("CHI") was entitled to summary judgment on trademark infringement and unfair competition claims against a terminated franchisee, J. Bhagwanji, Inc., and its owner, Hemant Bhakta. To prove trademark infringement, CHI had to show: (1) it possessed a legally protectable mark; and (2) the franchisee used the same or similar marks in commerce in a manner likely to confuse potential customers as to the affiliation, connection, or association of the hotel with CHI. Both sides agreed that CHI owned the subject trademarks and that the franchisee continued to use them after the franchise was terminated. The court found that since the franchisee continued to use CHI's exact mark after CHI terminated the franchise agreement and since customers had complained to CHI about the condition of the franchisee's property, customers were actually confused, which was enough to prove the franchisee used the marks in a manner likely to confuse potential customers.

The franchisee argued that CHI had wrongfully terminated the franchise agreement and had expressly or impliedly approved continued use of its trademark. The court disagreed and awarded CHI a permanent injunction to prevent the franchisee from continuing to use CHI's mark. The court also reminded the franchisee that the Lanham Act is intended to make trademark infringement unprofitable and that it could, if warranted, award CHI treble damage and attorney's fees. After considering the time period during which the franchisee infringed on CHI's marks and the franchisee's gross sales and profits during the infringement period, the court awarded CHI \$219,974.57 in damages, but declined to award CHI treble damages or attorney's fees. Regardless, the Choice Hotels case serves as a reminder to franchisees of the risks associated with continuing to use their franchisor's registered trademarks after their franchise agreements are terminated.

Next State Owner Webinar

Our next State Owner webinar will be Wednesday June 26, 2013 at 4:00 pm MDT. The last two meetings have been around 40 minutes. We will plan on this next one running about 45 minutes. It is helpful for everyone to have a headset with a mic. We will be on line at 3:50 so that anyone who wants to test their headset can do so before the meeting begins. We will send out an email on Monday June 24th as a reminder, it will include the agenda and the link to join the meeting. We strongly encourage each state owner to be in attendance. We encourage follow up through the State Owner portion of the Bulletin Board.

We appreciate all you are doing to move the business forward.