

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

JITTERSWING, LLC,)
)
)
 Plaintiff/Appellant)
)
 vs.)
)
 FRANCORP, INC.,) Appeal No. ED93045
)
)
 Defendant/Respondent)
)
)

LEGAL FILE

Comes Now Plaintiff/Appellant, Jitterswing, LLC and files herewith the legal file. The Clerk's Certificate of True Copies is attached hereto.


Allen D. Kircher, Attorney at Law



Allen D. Kircher, Mo. Bar. No. 33346
Attorney for Plaintiff/Appellant
330 Jefferson Street
St. Charles, Missouri 63301
(636) 724-2060 (office)
akircher@kircherlegal.com

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Legal File was sent by United States mail, postage prepaid, on this 14th day of July, 2009, to John E. Tresslar, Attorney for Defendant/Respondent, 1115 Locust Street, Fourth Floor, St. Louis, MO 63101.





JUDY ZERR

CLERK OF THE CIRCUIT COURT

**ST. CHARLES COUNTY, MISSOURI
CIVIL DIVISION**

CINDY SYBEL
UNIT MANAGER

STATE OF MISSOURI)
)
COUNTY OF ST CHARLES)

I, **JUDY ZERR**, Clerk of the Circuit Court within and for the County of St. Charles, State of Missouri, do hereby certify that the foregoing are true copies of original documents remaining on file and record in my office.

WITNESS, my hand and SEAL of said Court this 25 day of June, 2009.

Judy Zerr
Judy Zerr, Circuit Clerk

By [Signature]
Deputy Clerk

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

JITTERSWING, LLC ,)	
)	
Plaintiff/Appellant)	
)	
vs.)	
)	
FRANCORP, INC.,)	Appeal No. ED93045
)	
Defendant/Respondent)	
)	
)	

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0911-CV01033 JITTERSWING LLC V FRANCORP INC ET AL Security Level: 1 Public

Case Type:	CC Other Tort	Case Filing Date:	30-Jan-2009
Status:	Judgment Entered		
Disposition:	Dismiss by Ct w/o Prejudice	Disposition Date:	20-Apr-2009

Release/Status Reason
Change Date

Judge	LUCY D RAUCH (27891)
Plaintiff	JITTERSWING, LLC (JITTERSWN)
Attorney for Plaintiff	ALLEN D KIRCHER(33346)
Defendant	FRANCORP, INC. (FRANCORP)
Attorney for Defendant	JOHN ERIC TRESSLAR(35364)
Defendant	DONALD D BOROIAN (@100787)

<u>Filing Date</u>	<u>Description</u>
30-Jan-2009	Pet Filed in Circuit Ct Judge Assigned
03-Feb-2009	Summons Issued-Circuit Document ID: 09-SMOS-19, for FRANCORP, INC.; Document ID: 09-SMOS-20, for BOROIAN, DONALD D; RETURNED TO REQUESTING PARTY FOR FORWARDING TO PROPER SHERIFF. CF Service/Attempt Date: 26-Mar-2009
25-Mar-2009	Agent Served Document ID - 09-SMOS-19; Served To - FRANCORP, INC.; Server - ; Served Date - 26-MAR-09; Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Served; Service Text - SERVED TO LUANNE BLUE D/P Summons Returned Non-Est Document ID - 09-SMOS-20; Served To - BOROIAN, DONALD D; Server - ; Served Date - 26-MAR-09; Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Non-est, NO CONTACT.
31-Mar-2009	Notice of Hearing Filed RE: ALL PENDING MOTIONS ON APRIL 20, 2009 AT 9 AM, FILED. PAG Filed By: JOHN E TRESSLAR Motion to Dismiss Filed By: JOHN E TRESSLAR
01-Apr-2009	Hearing Scheduled Scheduled For: 20-Apr-2009; 9:00 AM; LUCY D RAUCH; Setting: 0; St Charles Circuit Div
20-Apr-2009	Dismiss by Ct w/o Prejudice Scheduled For: 20-Apr-2009; 9:00 AM; LUCY D RAUCH; Setting: 0; St Charles Circuit Div Judgment Entered DEFENDANT FRANCORP, INC'S MOTION TO DISMISS IS CALLED AND HEARD. THE COURT GRANTS DEFENDANT'S MOTION TO DISMISS WITHOUT PREJUDICE FOR THE REASON THAT THE PARTIES CONTRACTED TO WHICH STATE'S LAW SHOULD APPLY, AS PER MEMORANDUM L.D.R.
20-May-2009	Filing: PLAINTIFF FILES DISMISSAL WITHOUT PREJUDICE. CT

Report: CZR0026

11TH JUDICIAL CIRCUIT
ST CHARLES CIRCUIT DIV
CIRCUIT COURT DOCKET SHEET

Date: 26-May-2009

Time: 3:43:17PM

Page: 2

Case continued from previous page.

0911-CV01033

JITTERSWING LLC V FRANCORP INC ET AL

Security Level: 1 Public

Filed By: ALLEN D KIRCHER

22-May-2009

Order of Dismissal

COMES NOW PLAINTIFF, JITTERSWING LLC AND DISMISSES ITS CAUSE OF ACTION AGAINST
DEFENDANT DONALD D BOROIAN WITHOUT PREJUDICE. LDR

Filed By: LUCY D RAUCH

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY, MISSOURI
11th JUDICIAL CIRCUIT

JITTERSWING, LLC)
)
)
Plaintiff,)
)
)
vs.)
)
)
FRANCORP, INC.)
)
)
Serve:)
)
Registered Agent)
Thomas Planera)
4440 Lincoln Hwy, #301)
Matteson, IL 60443)
)
)
and)
)
)
DONALD D. BOROIAN)
)
)
Serve:)
)
2521 St. Andrews Dr.)
Olympia Fields, IL 60461)
)
)
Defendants.)

Cause No. 0911 - CV01033

Div. No. 3

FILED
JAN 30 2009
Circuit Clerk
ST. CHARLES COUNTY

PETITION FOR DAMAGES

JITTERSWING, LLC, Plaintiff, for its Petition for Damages against FRANCORP, INC. and DONALD D. BOROIAN, Defendants, states to the court as follows:

1. JITTERSWING, LLC, Plaintiff, at all times mentioned herein, was a limited liability company, engaged in the dance club business, was organized and existing under the laws of the State of Missouri, was owned by TERRY JAMES and BARBARA VIERDAG, and had its principal place of business at 242 Vista Oak Ct., Ballwin, MO 63021.
2. FRANCORP, INC., Defendant, at all times mentioned herein was a corporation organized and existing under the laws of the State of Illinois. Its registered agent in the State of

Illinois is Thomas Planera, II, and its registered office in the State of Illinois is 4440 Lincoln Hwy, #301, Matteson, IL 60443.

3. DONALD D. BOROIAN, Defendant, at all times mentioned herein, was a resident of the State of Illinois, residing at 2521 St. Andrews Dr., Olympia Fields, IL 60461 and was President and Secretary of FRANCORP, INC.

4. For the purpose of Plaintiff being able to sell franchises of its business, Defendants prepared a Uniform Franchise Offering Circular ("UFOC") pursuant to rules and regulations promulgated by the Federal Trade Commission, prepared a Franchise Agreement, and prepared other documents for Plaintiff. Defendant charged Plaintiff approximately \$45,000 for the preparation of such documents of which \$25,000 was paid by Plaintiff to Defendant.

5. Including the transmission of the UFOC, Franchise Agreement and other documents, all communications between Plaintiff and Defendants were conducted by email, telephone, and mail while Terry James was physically located at Plaintiff's principal place of business.

6. Pursuant to Mo. Rev. Stat. §484.010.2, such actions by Defendants as alleged herein constitute the law business.

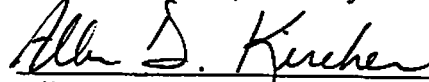
7. Neither Defendant is licensed to practice law in the State of Missouri and such actions by Defendants as alleged herein are a violation of Mo. Rev. Stat. §484.020.1.

8. Pursuant to Mo. Rev. Stat. §484.020.2, Plaintiff is entitled to treble the amount it paid for the service rendered in violation of §484.020.1.

9. Any contract between Plaintiff and Defendant is void.

WHEREFORE, Plaintiff, JITTERSWING, LLC, demands judgment against Defendants, jointly and severally, in the amount of \$75,000, the costs of this action, and for such other and further relief as the Court deems necessary and proper.

Allen D. Kircher, Attorney at Law



Allen D. Kircher, Mo. Bar. No. 33346

Attorney for Plaintiff

330 Jefferson Street

St. Charles, Missouri 63301

(636) 724-2060 (office)

akircher@kircherlegal.com

IN THE ELEVENTH JUDICIAL CIRCUIT, STATE OF MISSOURI
CIRCUIT JUDGE DIVISION

JITTERSWING, LLC
Plaintiff,

v.

FRANCORP, INC. and
DONALD BOROIAN
Defendants.

)
)
) Cause Number: 0911-CV01033
)
) Division 3
)
)
)

MOTION TO DISMISS

FILED

SEP 11 2009

JUDY ZIEGLER
CIRCUIT CLERK
ST. CHARLES, MO.

Comes now Defendant, Francorp, Inc., by and through its attorney, John E Tresslar, P. C., and for its Motion to Dismiss states as follows:

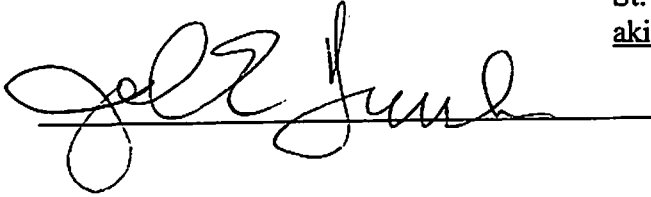
1. At all times herein mentioned Defendant, Francorp, Inc. was and is an Illinois corporation organized and existing under the laws of the State of Illinois.
2. At the time Terry James contacted Defendant to contract for the services which are the subject of this lawsuit, Terry James was a resident of the City of St. Louis, State of Missouri and there were no contacts to establish proper venue in the County of St. Charles, State of Missouri. See Exhibit "C" attached hereto.
3. Contrary to Plaintiff's Petition in paragraph 1, JitterSwing, LLC was not a limited liability company organized and existing under the laws of the State of Missouri at the time that Terry James contracted with Defendant Francorp, Inc.
4. On or about December 4, 2006, Defendant, Francorp, Inc., by and through its agent Christopher J. Conner, offered to perform certain acts and to enter into a contract with Terry James. See EXH "A" attached hereto.
5. On or about December 11, 2006, Terry James accepted Defendant Francorp, Inc.'s offer and entered into a binding contract. See EXH "A" and Exhibit "C" attached hereto.
6. The contract at issue unequivocally states that "The parties agree that any dispute arising under this Agreement shall be resolved in the state or federal courts, within

POSTED
PAGE

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was sent by United States mail, postage pre-paid, this 31st day of March, 2009, to the following counsel of record:

Allen D. Kircher
330 Jefferson Street
St. Charles, MO 63301
akircher@kircherlegal.com

A handwritten signature in cursive script, appearing to read "Allen D. Kircher", is written over a horizontal line.



Franchise Corp.
The Franchising Leader

CLIENT: TERRY JAMES

FRANCHISE DEVELOPMENT PROGRAM

The Franchise Development Program consists of service required by a business to create a comprehensive franchise program, launch a marketing and sales campaign, and effectively recruit, train, and service franchisees.

The services outlined herein are intended to assist the Client in initiating a franchise program. Francorp provides three ranges of services:

- ① **Full Development Program:** All the services normally required by a business to create a comprehensive franchise program, launch a marketing and sales campaign, and effectively recruit, train, and service franchisees on a regional or national basis.
- ② **Basic Development Program:** The essential services required to introduce a basic franchise program, begin to sell franchises in local markets, and lay the groundwork for a franchise organization.
- ③ **Minimum Services Program:** The minimum services required to structure the franchise program and offer franchises for sale.

① STRATEGIC PLANNING AND PROGRAM STRUCTURE

① Initial Client Meeting

At Francorp's offices, the Client will meet with Department Heads and individuals assigned to the project for the purpose of reviewing the company's history, operations, and goals, as well as identifying the Client's principle franchise strategy. Subsequently, in meetings with individual departments, issues related to developing a customized franchise program will be discussed in detail, and preliminary schedules for completion of work product will be established.

② **Concept Research and Review**
Francorp personnel will examine the basic concept, operational format, and general marketing characteristics of the Client's business. Each of these key aspects will be benchmarked against existing similar franchisors, comparable business models in all types of industries, and also evaluated in terms of their overall effect upon the franchise program. This review will encompass types of products and services offered; types and size of locations utilized; total investment for establishing an outlet; and sales and earnings of the corporate entity and franchising concept.

③ **Senior Consultant On-Site Analysis**
A Senior Consultant will visit the business to be franchised to review its operational characteristics and recommend policies and procedures, aimed at enhancing the franchise

program. The Senior Consultant will also identify operational elements of the business critical to the legal, operations, and marketing aspects of the franchise program, and relay this information to appropriate Francorp personnel.

④ Senior Consultant Analysis

At Francorp offices, a Senior Consultant will review and recommend policies and procedures aimed at enhancing the franchise program.

⑤ Franchise Structure

Francorp will make recommendations relating to the critical business decisions that become the foundation of the franchise program and that are incorporated into the legal, operations, and marketing documents and strategies. These issues include policy formulation, market potential, speed of expansion, the franchise structure best suited to the Client's situation, and current company resources available to meet franchise goals.

A. Franchise Owner Profile

The ability to identify specific characteristics of the target franchisee is essential to structuring a franchise program. Qualifications, such as financial resources, previous experience, and business skills, will be addressed, based on the needs of the Client and Francorp's knowledge of the franchise marketplace.

B. Type of Franchise Offered

A franchisor may offer individual franchises, multi-unit franchises, or sub-franchises – or all three – depending on such factors as unit investment,

complexity of operation, cost and nature of support programs, and expansion goals. In addition, a franchisor may offer a start-up franchise or a conversion franchise (to a compatible existing business) or both. Francorp will recommend a franchise program designed to meet the Client's needs.

C. Determination of Territory
Based on the nature of the Client's business, competition and other factors, Francorp will suggest whether or not the franchisee needs an exclusive territory and the degree of exclusivity. If it does, Francorp will analyze available territorial and demographic data from the Client's existing business and prioritize appropriate criteria, such as population, competition, income levels, size of the market needed to support a franchise, industrial base, or business base.

D. Franchise Support Programs
Francorp will identify the type and scope of services to be provided to franchisees, including initial training, supervisory visits, site selection, and advertising support. In this manner, a comprehensive support program can be planned and the cost of that program anticipated.

E. Internal Staffing
Francorp will assess human resource needs for implementing the franchise program and will determine how best to meet the needs, whether by expanding the roles of current staff members, or by creating new positions. Francorp will also review the Client's organization structure, assess its adaptability to franchising, and recommend changes, if necessary.

Franchise Revenue Sources
Francorp will review the Client's revenue options and recommend appropriate revenue sources that may contribute to the Client's income and profits. Among the available revenue sources are the following:

A. Initial Franchise Fees
Franchise fees will be determined after weighing various factors, among

them the marketability of the franchise at various price levels, competition from other business opportunities available to potential buyers, and the cash flow produced by the business. The recommended initial franchise fee will be structured in light of a number of factors, such as front-end selling expenses, advertising, commissions, training, site and start-up assistance costs, market needs, and other variables.

B. Royalties
Royalties will be recommended after a review of the Client's business and in light of the needs of franchisees and current industry practices. They will be based on the need to maintain sufficient corporate cash flow, to support general and administrative costs and franchise services, and to provide ongoing income for the continuing operation of the franchise. They must also be affordable for franchisees.

C. Advertising Fees
Local, cooperative, and corporate advertising fees will be recommended after an evaluation of the amounts currently spent for advertising in operating units and the type of advertising needed at the unit level. Corporate advertising fees required of franchisees will be based on the need for finished advertisements in their various forms.

D. Other
Some franchisors derive income from other sources as well, including the sale of products and services, leasing of assets and real property, and financing. Francorp will assist the Client in determining which sources are appropriate and practical.

Franchise Business Planning
 Following the Senior Consultant's analysis, team members assigned to the Client's project will review all critical decisions and weigh the impact of these decisions on key aspects of the franchise program. Francorp will complete detailed pro formas and financial projections which contain a five-year cash flow analysis of individual operating units and the franchisor organization. In addition, Francorp will make final recommendations relating to the business, legal, and marketing characteristics that impact on the success of the franchise program. Finally, Francorp will formalize its recommendations into a franchise business plan. This plan provides key franchise business decisions, assumptions, and financial projections needed to set short and long term goals. Clients can use this plan in presentations for financial institutions or for corporate planning.

Francorp will develop a **Franchise Structure Report**. This report includes comparisons of similar franchise companies or business models. It also summarizes recommended structures, fees, royalties, financial projections and proformas that define the concept as a franchise.

Francorp will develop the **Franchise Structure and Assumptions**.
 ✓ Financial projections and pro formas are developed along the way with the information needed for the drafting of the franchise documents.

FRANCHISE DOCUMENTATION

✓ **Individual Franchise Agreement**
 Francorp will draft and submit to the Client's attorney for review and approval, a Franchise Agreement defining the contractual relationship between the franchisor and the franchisee. This Agreement will be

developed in conjunction with input received from Francorp's program analysis and recommendations, and will be based on current industry practice and recent developments in franchise law.

Offering Circular
 ✓ Francorp will draft and submit to the Client's attorney, for review and approval, the offering circular required by the Federal Trade Commission and state regulatory agencies. This document will contain required information, arranged in the format stipulated by U.F.O.C. guidelines. (Earnings claims are not included as part of this service.)

Franchise Registrations and Filings
 After the Client's attorney has approved the final drafts of the Franchise Agreement and Offering Circular, Francorp will prepare the franchise registration applications required by various state regulatory agencies. Applications will be based on information provided to Francorp by the Client and will be submitted to the Client's attorney for review and approval. Included in these applications are materials such as the Uniform Franchise Registration Application, Supplemental Information Form, Salesman Disclosure Form, Uniform Consent to Service of Process, and Corporate Acknowledgment and Certification Page, as well as copies of advertising materials and the Offering Circular. Applications will be prepared and processed for registration and/or filing in the following states:

- | | |
|--------------------------------------|---|
| <input type="checkbox"/> Alaska | <input type="checkbox"/> New York |
| <input type="checkbox"/> Connecticut | <input type="checkbox"/> North Carolina |
| <input type="checkbox"/> Florida | <input type="checkbox"/> North Dakota |
| <input type="checkbox"/> Hawaii | <input type="checkbox"/> Rhode Island |
| <input type="checkbox"/> Illinois | <input type="checkbox"/> South Carolina |
| <input type="checkbox"/> Indiana | <input type="checkbox"/> South Dakota |
| <input type="checkbox"/> Iowa | <input type="checkbox"/> Texas |
| <input type="checkbox"/> Kansas | <input type="checkbox"/> Utah |
| <input type="checkbox"/> Kentucky | <input type="checkbox"/> Virginia |
| <input type="checkbox"/> Maine | <input type="checkbox"/> Washington |
| <input type="checkbox"/> Maryland | <input type="checkbox"/> Wisconsin |
| <input type="checkbox"/> Michigan | <input type="checkbox"/> All of the above |
| <input type="checkbox"/> Minnesota | |
| <input type="checkbox"/> Missouri | |
| <input type="checkbox"/> Nebraska | |
| <input type="checkbox"/> Other _____ | |

*Licenses may be required

OPERATIONS SERVICES

Initial Analysis and Outline
 Francorp will develop a preliminary outline that identifies and describes the topics that should be covered in the comprehensive Franchise Operations Manual. Based on discussion at the initial Client meeting and material supplied by the Client, this outline will reflect Francorp's initial understanding of the issues relevant to the franchisee and will be specifically tailored to the franchise concept. It will also indicate the points at which the manual should cross-reference the provisions of the Franchise Agreement and will delineate the areas for which systems must be developed to monitor the operations of the franchisee. The outline is designed to aid the process of implementing the franchise program and will further serve as the agenda for the field visit of the Operations Consultant.

On Site Analysis and Consulting
 A Francorp Operations Consultant will visit the Client's place of business to observe its operations first-hand and to discuss the preliminary outline. Subject to Client approval, the Consultant will determine the manual's style, scope, and format, and will document procedures, collecting any materials that are to be included in the manual.

Franchise Operations Manual
 Francorp will create a customized, comprehensive manual incorporating information essential to the operation of the franchise. Its content will be based on data obtained in meetings with the Client, the observation of the business, the final franchise documents prepared for the program, and Francorp's extensive experience.

Manual Outline and Editorial Review
 For Clients who prefer to draft their own manuals, Francorp provides the Client with an outline and will edit the Client's manual.


ADVERTISING AND MARKETING SERVICES

The Franchise Marketing Plan
 Francorp will develop a comprehensive plan for generating franchise sales leads. This plan, based on an understanding of the Client's expansion goals and the profile of the target franchise owner will recommend specific marketing activities and will include appropriate creative materials—such as direct mail letters and copy and layout for franchise sales ads—that can be utilized in the franchise sales campaign. The Marketing Plan will incorporate specific media suggestions, a budget for the campaign, and a timetable for implementation. It will also contain useful information on topics such as legal constraints on franchise marketing, how to obtain publicity, and whether to conduct seminars and participate in trade shows. Copy for the ad and letter will be developed within the context of Francorp's experience, with guidelines established by the Federal Trade Commission, and by various state regulatory agencies whose approval is required before any advertising materials can be used in connection with the offer of a franchise. All copy must also be reviewed by the Client's attorney. Final digital files for ad placement are *not* included in this Proposal.

Franchise Brochure
 Francorp will develop copy and layout for a four-color brochure of approximately six to twelve pages, plus cover, designed to describe the Client's franchise and to build enthusiasm among prospective franchisees. The brochure will describe in detail the distinctiveness of the concept, the benefits of the franchise program, and the market for its products and/or services. Francorp will provide a disk containing the franchise brochure layout. Photography and printing costs, including final formatting, stock photography, photography scanning and final photography placement in the layout are *not* included in this Proposal.

 **FRANCHISE INTERNET MARKETING**

Franchise Internet Marketing Through Francorp Connect's Essential Internet marketing program, Francorp will be providing the Client with one year of online visibility on the Francorp Connect Franchise Incubator™ or in the main directory of the franchise portal (www.francorpconnect.com). This entitles the Client to also receive a website review and critique of their current website with suggestions for improvement pertaining to marketing a franchise opportunity.


 **FRANCHISE SALES TRAINING AND SUPPORT**

Franchise Sales Training Francorp conducts a two-day Franchise Sales Training course in Francorp's offices on a regular basis throughout the year. The course includes a comprehensive overview of the franchise sales process, plus detailed instruction in proven franchise sales techniques, proper lead follow-up procedures, including Internet lead tracking, state and federal legal requirements pertaining to franchise sales, franchise trade shows and sales seminar presentations, and much more.

Franchise Sales Manual Each person attending sales training will receive a copy of Francorp's copyrighted franchise sales manual, "The Francorp Franchise Sales Strategy", for use in establishing an effective franchise sales program, as a reference guide, and as a textbook for instructing franchise sales personnel. The Francorp Franchise Sales Strategy manual provides useful information on all aspects of the franchise sales process, including the psychology of the franchise buyer, complying with federal and state franchise disclosure laws, establishing a lead-tracking system, showing the Client's facility to its best advantage, and conveying the benefits of franchising. Also included is

information on how to conduct seminars, hold an open house, work trade shows, plus sections on special franchising situations, including area development, and master and conversion franchises.

Franchise Sales Implementation Francorp will be available for hands-on assistance in your franchise sales process. This critical support can include preliminary trade show training, in-show consulting and guidance, sales presentations and follow-up meetings with prospective buyers, reviewing the Client's sales techniques, coaching sales staff, and guidance in establishing proper methods of their franchise sales presentations.

 **FRANCHISE MANAGEMENT TRAINING**

Franchise Management Training Francorp conducts a two-day Franchise Management Training course designed to educate the Client's management team on the complexities of operating and managing a growing franchise organization. Detailed and comprehensive manuals are provided to all attendees on all course segments. This course covers topics that include:

A. Building The Franchise Organization
This segment includes the key development issues that franchise companies need to address as they expand their business systems.

B. Training Your Franchisees
This segment establishes the procedures for a franchisor to build a comprehensive training program. It also encompasses relevant issues such as management and operation of the franchise business, preparation of products or services, quality assurance, personnel management, advertising, bookkeeping, use of trademarks, maintenance of trade secrets, legal obligations, customer relations, operational requirements and many other issues that may vary from business to business.

C. Providing Effective Field Support
It is important that franchisors develop a qualified field support program to assist their franchisees and evaluate the standards of each franchise at the unit

The following items are not included as part of this Proposal:

1. Transportation, food, mileage and lodging.
2. Printing, photography, and stock photography.
3. Fees required by state regulatory agencies.
4. Courier (overnight) delivery.
5. On-line database charges.
6. Website development
7. Outside professional service fees: legal, accounting and audit
8. Media advertising.
9. International telephone charges.

Client will be entitled to two (2) revisions of all documents. Additional work, if requested, will be billed on an hourly basis upon the client's authorization.

No expenses will be incurred by Francorp without the Client's prior approval. Reimbursable expenses shall be paid as billed. Payments not made when due shall bear a late charge of 1.5% each month.

Acknowledgments:

All franchise documents and forms provided by Francorp that are required for compliance with state and federal law will be submitted to the Client's attorney for review and approval. Neither Francorp nor its employees can or will act as the Client's attorney. Francorp will not be responsible for performing due diligence and will not independently verify representations of fact made by the Client to Francorp in the preparation of franchise documents and other work products described in this Agreement.

All work covered under this Proposal shall be completed within the general consulting period specified above, if applicable. Work not completed by this date, due to Client caused delays, will be completed by Francorp on an hourly basis at Client's expense. If revisions to Francorp's work products are required, as a result of changes in the Client's program, which occur after Client has signed off as to the completed work product, Client will be billed for the revisions, regardless of the department at Francorp performing said revisions, on an hourly basis.

The plans, materials, and consulting advice provided under this Agreement will be prepared, based on Francorp's experience and the information available to it. Client acknowledges that it has independently selected franchising as a means of doing business from the various options available to it. However, the success of a franchise program depends on a variety of factors outside of Francorp's control. Moreover, conditions affecting a franchise program may change dramatically over time in ways that cannot be anticipated. For these reasons, Francorp cannot and does not warrant the success of any such program and cannot and does not warrant that the actual results or experience of a franchise program will be similar to any of the projections or forecasts provided by Francorp, under this Agreement.

Francorp will not act as a franchise broker in connection with the sale of the Client's franchises, nor will Francorp participate in any sales presentation directly to prospective franchisees. Client is not authorized to use Francorp's name

in connection with its franchise program without Francorp's express written consent.

In the event that this Agreement is terminated by either party for any reason, Francorp will provide to the Client an accounting of the total work performed on the Client's program by Francorp personnel. The Client will be responsible for all fees and costs incurred through the day of termination. If cancelled by the Client, Francorp will refund the unused paid amount less a \$5,000 cancellation fee. Work performed to date will be charged at Francorp's regular hourly billing rate or percentage of completion whichever is greater.

This Proposal represents the entire Agreement between the parties. Client has not relied on any representations, either oral or written, other than those herein contained. This Proposal shall be construed and enforced, under the laws of the State of Illinois, without giving effect to its conflict of laws principles.

The parties agree that any dispute arising under this Agreement shall be resolved in the state or federal courts, within the State of Illinois, and each party expressly consents to jurisdiction therein. Should Francorp prevail in any proceeding by Francorp to enforce the terms hereof, Francorp shall be entitled to the recovery of its costs of suit, including its reasonable attorney's fees.

Under no circumstance shall Francorp or its directors, officers, employees, or agents, be liable to you for any incidental, indirect, special, or consequential damages occurring out of this Agreement. At no time shall Francorp's total liability to you for all damages, losses, and causes of action (whether in contract, tort or otherwise) exceed the amount paid by you, under this Agreement.

If this Proposal meets with your approval, please sign and return along with the initial payment. This Proposal will be valid for thirty (30) days.

SUBMITTED BY:
FRANCORP, INC.

By: Christopher J. Conner

Title: Senior Consultant

Date: December 4, 2006

ACCEPTED:
Company: Terry James

By: [Signature]

Title: [Signature]

Date: 12/11/2006

Francorp™

The Franchising Leader

1-800-FRANCHISE
(1-800-372-6244)
www.francorp.com

Corporate Headquarters
CHICAGO
20200 Governors Drive, Olympia Fields, IL 60461
PHONE: (708) 481-2900 • FAX: (708) 481-5865

15

State of Missouri



Robin Carnahan
Secretary of State

CERTIFICATE OF ORGANIZATION

WHEREAS,

JitterSwing, LLC
LC0805767

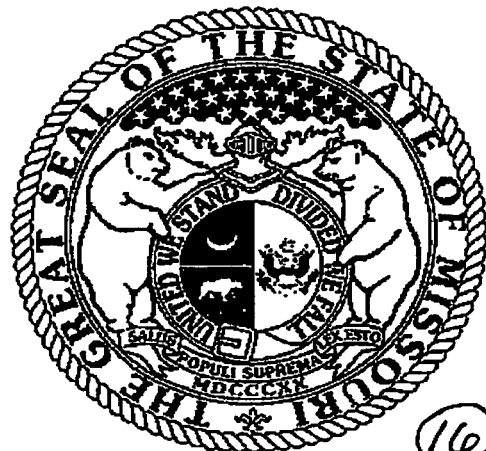
filed its Articles of Organization with this office on the 29th day of March, 2007, and that filing was found to conform to the Missouri Limited Liability Company Act.

NOW, THEREFORE, I, ROBIN CARNAHAN, Secretary of State of the State of Missouri, do by virtue of the authority vested in me by law, do certify and declare that on the 29th day of March, 2007, the above entity is a Limited Liability Company, organized in this state and entitled to any rights granted to Limited Liability Companies.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, this 29th day of March, 2007.

Robin Carnahan

Secretary of State



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State of Missouri
Robin Carnahan, Secretary of State

Corporations Division
P.O. Box 778 / 600 W. Main Street, Rm 322
Jefferson City, MO 65102

File Number:
LC0805767
Date Filed: 03/29/2007
Robin Carnahan
Secretary of State

Articles of Organization

(Submit with filing fee of \$105)

1. The name of the limited liability company is:

JitterSwing, LLC

(Must include "Limited Liability Company," "Limited Company," "LC," "L.C.," "L.L.C.," or "LLC")

2. The purpose(s) for which the limited liability company is organized: Operation of dance clubs and the transaction of any or

all lawful business for which a limited liability company may be organized under the Missouri Limited Liability Company Act.

3. The name and address of the limited liability company's registered agent in Missouri is:

Terry J. James 242 Vistaoak Ct. Ballwin, MO 63021

Name Street Address: May not use P.O. Box unless street address also provided City/State/Zip

4. The management of the limited liability company is vested in: managers members (check one)

5. The events, if any, on which the limited liability company is to dissolve or the number of years the limited liability company is to continue, which may be any number or perpetual: perpetual

(The answer to this question could cause possible tax consequences, you may wish to consult with your attorney or accountant)

6. The name(s) and street address(es) of each organizer (P.O. Box may only be used in addition to a physical street address):

(Organizer(s) are not required to be member(s), manager(s) or owner(s))

Terry J. James 242 Vistaoak Ct. Ballwin, MO 63021

7. The effective date of this document is the date it is filed by the Secretary of State of Missouri, unless you indicate a future date, as follows: _____

(Date may not be more than 90 days after the filing date in this office)

In Affirmation thereof, the facts stated above are true and correct:

(The undersigned understands that false statements made in this filing are subject to the penalties provided under Section 575.040, RSMo)

Terry J. James

Printed Name

3/28/2007

Date

Organizer Signature

Organizer Signature

Printed Name

Date

Organizer Signature

Printed Name

Date

Name and address to return filed document:

Name: Terry J. James
Address: 242 Vistaoak Ct.
City, State, and Zip Code: Ballwin, MO 63021

State of Missouri
Creation - LLC/LP 1 Page(s)



T0708856535

17

4-3-810

5120

TERRY J. JAMES 12.02
2729 CHEROKEE ST.
SAINT LOUIS, MO 63118-3035

12/11 2006

CHECKS SECURITY - EXECUTIVE BANK
FOR DEPOSIT ONLY - MICR LINE

PAY TO THE ORDER OF FRANCORP \$10,000⁰⁰
TEN THOUSAND & NO CENTS DOLLARS

BANK OF AMERICA
01826 MO
ACH R/T 081000032

FOR INITIAL PAYMENT
⑆081000032⑆ 003479418779⑆ 5120

(18)

Exhibit 11A 11

IN THE ELEVENTH JUDICIAL CIRCUIT, STATE OF MISSOURI
CIRCUIT JUDGE DIVISION

JITTERSWING, LLC
Plaintiff,

v.

FRANCORP, INC. and
DONALD BOROIAN
Defendants.

)
)
) Cause Number: 0911-CV01033
)
) Division 3
)
)
)
)

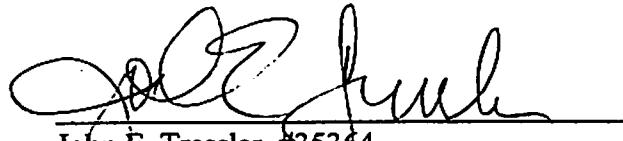
FILED
MAR 2 2009
JUDICIAL CIRCUIT
ST. CHARLES CO.

NOTICE OF HEARING

TO: All Attorneys of Record

YOU ARE HEREBY NOTIFIED that on April 20, 2009 at 9:00 a.m., or as soon thereafter as same may be heard, Defendant Francorp, Inc. will call up for argument all pending motions in this cause in Division 3 of the Circuit Court of the County of St. Charles, State of Missouri.

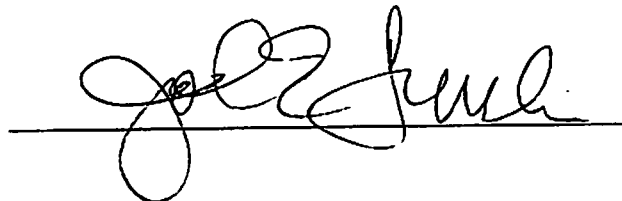
John E. Tresslar, P.C.



John E. Tresslar, #35364
Attorney for Defendant
1115 Locust Street, Fourth Floor
St. Louis, MO 63101
(314) 241-7216
(314) 231-0323 (Fax)
Jetresslar@aol.com

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was sent by United States mail, postage pre-paid, this 3rd day of March, 2009, to the following counsel of record: Allen D. Kircher, 330 Jefferson Street, St. Charles, MO 63301, akircher@kircherlegal.com.



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Ji Herswing LLC

IN THE

FILED

CIRCUIT COURT

VS.

APR 20 2009

County of St. Charles, Missouri

No. 0911-CV 01033

Judy Zerr
Circuit Clerk
ST. CHARLES COUNTY

3 Division

FranCorp Inc., et al

April 20

2009

ORDER / JUDGMENT

Defendant Francorp. Inc.'s Motion to Dismiss is called and heard. The Court grants Defendant's Motion to Dismiss without prejudice pursuant to Missouri Supreme Court Rule of Civil Procedure 55.27 for the reason that the parties contracted to which State's law should apply, per part of the Acknowledgment Section Seventh paragraph: "The parties agree that any dispute arising under this Agreement shall be resolved in the State or federal courts, with the State's courts, not state party expressly consent to jurisdiction herein."

So Ordered

Allen S Kriker #33346
Attorney

M. J. [Signature] 4-20-09
Judge Div. 3 2184

J. P. [Signature] 35364
Attorney (20)

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY, MISSOURI
11th JUDICIAL CIRCUIT

JITTERSWING, LLC)

Plaintiff,)

vs.)

FRANCORP, INC.)

and)

DONALD D. BOROIAN)

Defendants.)

Cause No. 0911-CV01033

Div. No. 3

FILED

MAY 20 2009

JUDY ZERR
CIRCUIT CLERK
ST. CHARLES CO.

DISMISSAL WITHOUT PREJUDICE

Comes Now Plaintiff, Jitterswing, LLC and dismisses its cause of action against
Defendant Donald D. Boroian without prejudice.

Allen D. Kircher, Attorney at Law

Allen D. Kircher

Allen D. Kircher, Mo. Bar. No. 33346

Attorney for Plaintiff

330 Jefferson Street

St. Charles, Missouri 63301

(636) 724-2060 (office)

akircher@kircherlegal.com

Partial Dismissal.

SO ORDERED:

[Signature]
JUDGE *[Signature]*

5-22-09

DATE

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was sent by United States mail,
postage prepaid, on this 20th day of May, 2009, to John E. Tresslar, 1115 Locust Street, Fourth
Floor, St. Louis, MO 63101.

(21)



IN THE 11th JUDICIAL CIRCUIT COURT, St. Charles County, MISSOURI

Judge or Division: 3	Case Number: 0911-CV01033	
Plaintiff/Petitioner: JitterSwing, LLC	Appellate Number:	<input type="checkbox"/> Filing as an Indigent
	Court Reporter: n/a	<input type="checkbox"/> Sound Recording Equipment
vs. Defendant/Respondent: FranCorp. Inc.	Reporter's Telephone: n/a	Number of Days of Trial: n/a
	Date of Judgment/Sentence: April 20, 2009 (Attach a copy)	Date Post Trial Motion Filed: n/a
	Date Ruled Upon: April 20, 2009	Date Notice Filed: May 27, 2009

FILED

MAY 27 2009

JUDY ZERR
CIRCUIT CLERK
ST. CHARLES CO.

(Date File Stamp)

Notice of Appeal

Supreme Court of Missouri Court of Appeals: Western Eastern Southern

Notice is given that JitterSwing, LLC appeals from the judgment/decree entered in this action on April 20, 2009 (date).

Complete if Appeal is to Supreme Court of Missouri
Jurisdiction of the Supreme Court is based on the fact that this appeal involves:

(Check appropriate box)

- The validity of a treaty or statute of the United States The title to any state office in Missouri
 The punishment imposed is death The construction of the revenue laws of Missouri
 The validity of a statute or provision of the Constitution of Missouri

If the basis of jurisdiction is validity of a United States treaty or statute, the validity of a Missouri statute or Constitutional provision or construction of Missouri revenue laws, a concise explanation, together with suggestions, if desired, is required. This may be filed as part of or with this notice of appeal or, in the alternative, may be filed within ten days after the notice of appeal is filed by filing it directly with the Clerk of the Supreme Court. See Rule 81.08(b) and (c) and Rule 30.01(f) and (g).

Appellant's Attorney/Bar Number Allen D. Kircher. #33346	Respondent's Attorney(s)/Bar Number(s) (If multiple, list all or attach additional sheets) John E. Tresslar. #35364	
Address 330 Jefferson St. St. Charles. MO 63301	Address 1115 Locust St. - Fourth Floor St. Louis. MO 63101	
Telephone (636) 724-2060 Fax (636) 949-3732	Telephone (314) 241-7216 Fax (314) 231-0323	
Appellant's Name JitterSwing, LLC	Respondent's Name FranCorp. Inc.	
Address 242 Vistaoak Ct., Ballwin. MO 63021	Address 20200 Governors Drive, Olympia Fields, IL 60461	
Telephone (636) 230-7078	Telephone (800) 373-6244	
Brief Description of Case Plaintiff filed its petition seeking damages for the unauthorized practice of law. The Court granted Defendant's Motion to Dismiss based on a contract signed by a person not named in the petition. Plaintiff appeals from that Order/Judgment.		
Date of Appeal Bond n/a	Amount of Bond n/a	<input type="checkbox"/> Bond Attached
Signature of Attorney or Appellant <i>Allen D. Kircher</i>		Date May 27, 2009

(22)

Directions to Clerk

Serve a copy of the notice of appeal in a manner as prescribed by Rule 43.01 on the attorneys of record of all parties to the judgment other than those taking the appeal and on all other parties who do not have an attorney. (A copy of the notice of appeal is to be sent by registered or certified mail to the Attorney General when the appeal involves a felony.) Mail a copy of the notice of appeal fee to the clerk of the Appellate/Supreme Court. If a party does not have an attorney, mail the notice to the party at his/her last known address. Clerk shall then fill in the memorandum below. (See Rules 81.08(d) and 30.01 (h) and (i).) Forward the docket fee to the Department of Revenue as required by statute.

Memorandum of the Clerk

I have this day served a copy of this notice of appeal by registered mail certified mail to each of the following persons at the address stated below:

Allen D. Kircher Attorney At Law 330 Jefferson St Saint Charles MO 63301	John Tresslar Attorney At Law 1115 Locust St - 5 th Floor Saint Louis MO 63101
Missouri Court of Appeals Eastern District One Post Office Square 815 Olive Street - Room 304 Saint Louis MO 63101	

I have also transmitted a copy of the notice of appeal to the clerk of the

Supreme Court Missouri Court of Appeals, Eastern District

Appeal fee in the amount of \$70.00 has been received by this clerk which will be distributed as required by statute.

A copy of an order granting leave to appeal as indigent.

Judy Zerr, Circuit Clerk

June 1, 2009

Date

By:

Cay Finders
Cay Finders, Deputy Clerk

Notice to Appellant's Attorney

Local rules may require supplemental documents to be filed. Please refer to the applicable rule for the district in which the appeal is being filed and forward supplements as required.

Certificate of Service

I certify that on May 27, 2009 (date), I served a copy of the notice of appeal on the following parties, at the following address(es), by the method of service indicated.

John E. Tresslar, Attorney for Defendant/Respondent, 1115 Locust St., Fourth Floor, St. Louis, MO 63101 by United States first class mail, postage prepaid.

Allen D. Kircher

Appellant or Attorney for Appellant

Directions to Clerk

Serve a copy of the notice of appeal in a manner as prescribed by Rule 43.01 on the attorneys of record of all parties to the judgment other than those taking the appeal and on all other parties who do not have an attorney. (A copy of the notice of appeal is to be sent to the Attorney General when the appeal involves a felony.) Transmit a copy of the notice of appeal to the clerk of the Supreme Court/Court of Appeals. If a party does not have an attorney, mail the notice to the party at his/her last known address. Clerk shall then fill in the memorandum below. (See Rules 81.08(d) and 30.01 (h) and (i).) Forward the docket fee to the Department of Revenue as required by statute.

Memorandum of the Clerk

I have this day served a copy of this notice by regular mail registered mail certified mail facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.

I have also transmitted a copy of the notice of appeal to the clerk of the

Supreme Court Court of Appeals, _____ District

Docket fee in the amount of \$ _____ has been received by this clerk which will be disbursed as required by statute.

A copy of an order granting leave to appeal as indigent.

Date

Clerk

(24)

Ji Herswing LLC

IN THE

FILED CIRCUIT COURT

VS.

County of St. Charles, Missouri

APR 20 2009

No. 0911-CV 01033

Judy Zett
Circuit Clerk
ST. CHARLES COUNTY

3 Division

Francorp Inc., et al

April 20

2009

ORDER / JUDGMENT

Defendant Francorp. Inc.'s Motion to Dismiss is called and heard. The Court grants Defendant's Motion to Dismiss without prejudice pursuant to Missouri Supreme Court Rule of Civil Procedure 55.27 for the reason that the parties contracted to which State's law should apply, per p. 8 of the Acknowledgment Section. Several provisions: "The parties agree that any dispute arising under this Agreement shall be resolved in the State or Federal courts within the State of Missouri, and each party expressly consents to jurisdiction there."

So Ordered

Allan S. Krich #33346
Attorney

M. J. [Signature] 4-20-09
Judge [Signature] 2154

[Signature] 35364
Attorney (25)

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

APPEAL NO. _____

CIVIL CASE INFORMATION FORM

(This form must be filed with the NOTICE OF APPEAL with the Circuit Clerk)

List every party involved in the case, indicate the position of the party in the circuit court (e.g. plaintiff, defendant, intervenor) and in the Court of Appeals (e.g. appellant or respondent) and the name of the attorney of record, if any, for each party. Attach additional sheets to identify all parties and attorneys if necessary.

Party
JitterSwing, LLC,

Plaintiff/Appellant

v.
Francorp, Inc.,

Defendant/Respondent.

Attorney
Allen D. Kircher 33346

Name Bar No.
330 Jefferson St.

Address
St. Charles, MO 63301

City, State, Zip Code
(636) 724-2060

Phone Number
Allen D. Kircher, Attorney at Law

Law Firm or Office
John E. Tresslar 35364

Name Bar No.
1115 Locust St., 4th Floor

Address
St. Louis, MO 63101

City, State, Zip Code
(314) 241-7216

Phone Number
John E. Tresslar, P.C.

Law Firm or Office

The Record on Appeal will consist of:
 Legal File only or _____ Legal File and Transcript

ATTACH A COPY OF THE JUDGMENT OR ORDER APPEALED.

A BRIEF STATEMENT OR DESCRIPTION OF THE CASE (Any monetary awards shall be set forth. Attach one additional page, if necessary.)

Plaintiff filed its petition seeking damages for the unauthorized practice of law. The court granted Defendant's Motion to Dismiss based on a contract signed by a person not named in the petition. Plaintiff appeals from that Order/Judgment.

ISSUES EXPECTED TO BE RAISED ON APPEAL (Attach one additional page, if necessary. Appellate is not bound by this list. Attach copy of post-trial motion, if one was filed.)

See attached.

A COPY OF THIS FORM AND ATTACHMENTS MUST BE SERVED ON THE RESPONDENT.

JitterSwing, LLC, Plaintiff/Appellant v. FranCorp, Inc., Defendant/Respondent,
Cause No. 0911-CV01933
11th Judicial Circuit, St. Charles County, Missouri

Attachment to Civil Case Information Form

Issues Expected to be Raised on Appeal.

1. Whether Defendant/Respondent's Motion to Dismiss which attached a contract signed by a person not a party to the litigation was a Motion for Summary Judgment under Rule 74.04 and the court's Order/Judgment, despite citing a provision of the contract addressing venue and containing the words "without prejudice" was, in fact, a final order for purposes of appeal and subject to review.
2. Whether a foreign corporation can avoid liability under Mo. Rev. Stat. §§484.010-020 for practicing law without a license in the State of Missouri by entering into a contract that stipulates any disputes under the contract will be decided under the laws of the State of Illinois and provides for those disputes to be adjudicated in the courts of the State of Illinois.

D U P L I C A T E

R E C E I P T

11th Judicial Circuit Court

Receipt Number: 11AD3353221

Date: 01-JUN-2009

Cashier: FINDERCM

Payor: ALLEN D KIRCHER

ID: 33346

Address: 330 JEFFERSON ST
SAINT CHARLES, MO 63301

Court: 11th Judicial Circuit
Case Type: CC Other Tort
Location: St Charles Circuit Div
Case Judge: LUCY D RAUCH

First Charge on Case: Violation/Docket	Description	Amount

Case: 0911-CV01033 - JITTERSWING LLC V FRANCORP INC ET AL		
Party: ALLEN D KIRCHER		
Appeal Costs Taxed	Clerk-Appeal	50.00
Appeal Costs Taxed	Basic Civil Legal Ser-Appeal	20.00
	Check #784	-70.00

	Total Fees:	70.00
	Total Payment:	70.00
	Balance Due:	0.00

Next Scheduled Event:
Judge for Event:
Location of Event:

Receipt Text:

NOTE: Case information shown on receipt is current as of the date printed.

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