

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

**THE COFFEE BEANERY, LTD,**

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**Petitioners**

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**v.**

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**Civil No. 06-10408**

**WW, LLC, A Maryland Limited  
Liability Corporation, et al.**

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**Respondents**

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**SUBMISSION OF NEW MATERIAL EVIDENCE DELIBERATELY WITHHELD  
BY PETITIONERS IN ARBITRATION**

Respondents, WW, LLC, Richard Welshans and Deborah Williams have just uncovered an Amendment to The Coffee Beanery’s Pepsi Contract effective July 10, 2003 amending the October 29, 1999 Pepsi contract, a material piece of evidence deliberately withheld by Petitioners in the Arbitration. A copy of this Amendment is attached hereto as Exhibit 1.<sup>1</sup>

The Amendment references the “existing agreement” between Pepsi-Cola and The Coffee Beanery, Ltd., and its franchisees, which the arbitrator mysteriously and without support found was not in effect. The amendment reinforces that all ‘franchise-owned outlets operated under the Coffee Beanery, Ltd trademark and ...franchise-owned outlets that may be opened or acquired during the Term” shall “(i) exclusively purchase postmix products... from Pepsi-Cola and the Partnership [Pepsi/Lipton Tea Partnership]... and exclusively purchase ready-to-drink packaged beverage products (i.e., bottles and cans) sold under the trademarks of PepsiCo and the Partnership...from

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<sup>1</sup> While Exhibit 1 is only executed by The Coffee Beanery, it is Respondents’ understanding that a fully executed copy exists and that this Amendment was in effect in July, 2003.

individual local licensed Bottlers under authority from Pepsi-Cola and the Partnership.” The Amendment further states that The Coffee Beanery had already received \$114,139 from Pepsi as an advanced and that “commencing upon the Effective Date... and thereafter for the remainder of the Term, the foregoing amount shall be earned by Customer at the rate of \$0.25 per Case and/or \$0.35 per Gallon.” See Exhibit 1 hereto.

As previously stated the failure to disclose these obligations in the Offering Circular directly violates the plain language of §14-216(c)(16) of the Maryland Franchise Act and §445.1508(l) of the Michigan Franchise Investment Law. The Amendment confirms that the original agreement, introduced into evidence by WW, LLC, Welshans and Williams in the arbitration was valid and in full force and effect at the time they bought their Coffee Beanery Café franchise. The willful withholding of this Amendment likely led the arbitrator to conclude that the original Pepsi Agreement was not proved to be in full force and effect, although Respondents submit that the evidence was strong that it was, by its own terms, in effect. Petitioners obviously knew about this document and knew of its relevancy to the case. Respondents had specifically requested in their discovery requests in the Arbitration the production of “Any documents relating in any way to any contracts or agreements between CBL and any vendors or suppliers to Coffee Beanery franchises.” See Exhibit 2, Claimants’ First Request for Production of Documents. This Amendment was secretly withheld. It was material as it confirmed the existence of the Pepsi Agreement which was required to be disclosed and was binding on Respondents.

Accordingly, for the reasons set forth herein and in the prior memoranda in support of the Motion for Reconsideration of Order Confirming Arbitration Award,

Respondents respectfully request that this Court vacate the Arbitration award and grant Respondents such other and further relief as this Court deems proper.

/s/ Harry M. Rifkin

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of July, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to the following, and mailed a copy of the paper, first-class postage prepaid to:

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/s/ Harry M. Rifkin

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