

# Franchise Times®

## Taking off the Gloves Commercial cleaning franchisees sue

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Several pending court cases, which are all seeking class-action status, challenge the business model on which some of the largest commercial cleaning franchisors have operated for decades.

Lawsuits have been filed against Jani-King International of Addison, Texas; Coverall Health-Based Cleaning System of Boca Raton, Florida; and Jan-Pro Franchising International of Alpharetta, Georgia.

That business model, developed by Jani-King's founders in 1974 and since copied by competitors, is promoted as a low-cost business opportunity. Each franchisor sells off regions of the country to master franchisors who then sell unit franchises to individuals—mostly minorities and immigrants—who pay franchise fees of \$2,000 to \$5,000, plus “finders’ fees” for a specific amount of monthly business. At Coverall, for example, a franchisee would pay a total of \$10,750 for a franchise package that provides \$1,500 of commercial cleaning business each month. The Coverall regional franchisor then provides all the training, obtains and distributes all the cleaning contracts, sells required supplies and insurance coverage and does all the billing and collections—services those with a native language other than English might find useful.

But the lawsuits, filed recently in Massachusetts against all three companies and in Pennsylvania, Minnesota and California against Jani-King, contend that the cleaning companies misrepresent their offerings, because they do not have sufficient customers to guarantee each franchisee the amount of monthly cleaning business they purchase. Instead, the lawsuits allege, they breach their contracts by underbidding the amount of time and staffing required for each job, refusing to allow franchisees to inspect cleaning jobs or bid sheets before accepting or rejecting a job, offering geographically inconvenient jobs and unjustly taking jobs from one franchisee to re-sell them to others.

Perhaps more damaging is a second contention—that these so-called franchisees have so little control over their livelihoods, they should be re-classified as employees of the janitorial franchisors and, therefore, entitled to minimum wages, overtime pay, unemployment benefits and worker's compensation.

Lawsuits over misrepresentation and breach of contract are nothing new. According to its 2008 FDD (Franchise Disclosure Document), Coverall has settled 26 such cases in the past 10 years, admitting no guilt, but paying former franchisees settlements of \$3,575 to \$450,000. Many of the 52 pieces of litigation listed in Jani-King's FDD also ended in settlement payments. Commercial cleaning franchise contracts are usually written only in English (Coverall has offered a Spanish translation since 2004) and are so complex that the state of Maryland adds a warning page about potential risk factors to their FDDs, said Dale Cantone, Maryland's assistant attorney general. The Federal Trade Commission distributes a 19-page booklet of cautions for people considering commercial cleaning franchises.

What is new is the second charge, that commercial cleaning franchisees are merely buying themselves

low-paying jobs and should be treated like employees. In 2006 the Massachusetts Supreme Court ruled that a Coverall "franchisee," Rhina Alvarenga, was actually an employee and therefore entitled to unemployment benefits after Coverall removed her from a nursing home cleaning account. Attorneys representing Jani-King, Jan-Pro and other Coverall franchisees cited that decision in their complaints. "It's possible that the business model under which they've operated could be ruled illegal," said one of the attorneys.

Shannon Liss-Riordan, an attorney with the Boston firm Lichten & Liss-Riordan, who has filed lawsuits against Jani-King, Jan-Pro and Coverall, said, "It's heartbreaking to meet immigrants who have put their entire life savings into these franchises thinking they will have businesses to support themselves and their families. Instead, they are buying jobs that are terrible, that pay less than minimum wage. When they do get a check, the franchisor has taken out so many deductions, for royalties, supplies, management fees and bogus insurance policies, that they receive very little. I've seen pay stubs that say the franchisee owes the company money."

### The other side responds

Representatives of the janitorial franchises disagreed. Jacqueline Vlaming, Coverall's general counsel, said, "Every franchise owner who runs it like a business can make money. Ninety-nine percent of the people who buy a Coverall franchise are committed to it." Ron Rosenwasser, of Friedman, Rosenwasser & Goldbaum, of Boca Raton, who represents Jan-Pro, said, "We have thousands of franchisees who work hard and develop their franchise; others fail because they do not work the territory or are distracted by personal problems." And Don Burlison, executive vice president of Jani-King, said, "We have over 12,000 franchisees worldwide who have been operating for decades and have many success stories."

All three top cleaning franchises claim to have thousands of unit franchisees. Jani-King and Jan-Pro, in fact, trade titles as the country's fastest-growing franchise. But when Franchise Times made random phone calls to "active franchisees" listed in FDDs from all three systems, we found only a handful of people who said they were still happily working the franchise.

Since they operate through regional master franchisors, Coverall, Jani-King and Jan-Pro do not file FDDs that list all their unit franchisees. Their master franchisors are required to file their own FDDs, including franchisee listings, in registration states. New Venture of San Bernardino, a Jan-Pro regional franchisor in California, lists 94 franchisees in its most recent FDD. When Franchise Times called 39 of them at random, only three we reached said they were still active (two said they were making money and a third said she was "doing all right, but I'm not glad I got into this.") Of the rest, 10 phone numbers had been disconnected or reassigned, seven phones were never answered, 11 people never returned our messages, four people spoke only Spanish and four others said they had left the franchise because they never made any money.

Out of 17 franchisees listed in Jani-King's Los Angeles/Colton region, we reached only two that were still active. An Ohio woman listed as a current Coverall franchisee said, "I gave them \$16,000 and didn't get squat. After two years, the most I made was \$600 a month." Celeste Iles, of Rialto, California, said, "I paid Jan-Pro of San Bernardino \$5,000 for \$1,600 worth of work every month. Before I paid the money, I was told that I'd get accounts in the Rialto area and that I could decline jobs in cities I didn't ask to be in. Once I started, they offered me one cleaning account in Chino, which is 25 miles away, and others 15 to 20 miles away. When I turned those down, they said the offers fulfilled their contractual obligation. They did give me a few little accounts, but I never got my maximum volume. I cleaned one building diligently for over a year. Suddenly, the person in the Jan-Pro office said my level of cleaning went down and I lost the account. When I went back to the customer, they told me they never had a problem with me. I discovered that Jan-Pro would take accounts away from one franchisee to sell them to another franchisee."

Gerardo Vazquez, of Bloomington, California, said he, too, had purchased a franchise that was

supposed to generate \$1,600 worth of business each month from the San Bernardino Jan-Pro office. "But the office would underbid each contract, and no matter how hard I worked, I never made more than \$4 to \$5 an hour." After Vazquez posted his complaints on Internet blogs, he was contacted by so many other Jan-Pro franchisees, they decided to file a class-action lawsuit. He is now one of the 12 lead plaintiffs involved in Liss-Riordan's Jan-Pro lawsuit, filed last December in federal court in Massachusetts.

Fulton Connor, Jan-Pro's master franchisor in San Bernardino and San Jose, denied that his office underbid contracts. "Some people, like Mr. Vazquez, took too long and were not following the cleaning schedule. In general, our franchisees are happy. I've had owners thank me because they were able to buy homes for the first time in their lives."

Jan-Pro CEO Richard Kissane called the lawsuits "witch hunts" and said, "We have only one lawsuit in our FDD. If we didn't have wonderful relationships with our franchisees, we'd have lawsuits out the yin yang."

Liss-Riordan said, "The reasons we see so few complaints from commercial cleaning franchisees is that immigrants are often nervous about exercising their rights in the U.S. legal system. They don't know who to contact or they're embarrassed about losing so much money."

That may soon change. Thomas Pahl, of Foley & Mansfield in Minneapolis, who specializes in class-action cases, filed his case on January 27, 2009, on behalf of 52 Jani-King franchisees who were referred to his firm. In that case, Jani-King, represented by the Minneapolis firm of Faegre & Benson, won motions to dismiss 11 of the plaintiffs because their claims were too old and to move the action from state to federal court. But a request to dismiss the case altogether was denied.

The companies' business model might have worked a few years ago, before all three had recruited so many franchisees, the attorneys for the plaintiffs agree. Now they're so desperate for cleaning contracts "they're racing each other to the bottom, making bids so low it's not possible to do this work and make a living," said Liss Riordan. "If we're successful," she added, "we'd like to see cleaning work done by employees who receive the benefits of employment."

Jani-King's Burleson predicted a different outcome. "I don't believe there's any merit in these lawsuits," he said. "There's nothing different now. We've been doing the same thing for decades."