

# Franchise Times®

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## Continental Franchise Review..

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### USA Baby woes

#### Bankruptcy, litigation and state actions

By Janet Sparks

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The franchisee who was interviewed saying they were probably going to lose their house and cars, was posted on the franchise sales site as a testimonial to the system.

Oh, Baby.

Today's situation at USA Baby seems more dire than in our last update in 2007.

Not only has the franchisor dealt with litigation between its shareholders, it has also been engaged in lawsuits with two franchisee groups and a class-action arbitration. And the company is in Chapter 11 after three creditors petitioned for involuntary bankruptcy last September. But it doesn't end there.

On January 30, a second attorney general filed a lawsuit against a USA Baby store after receiving complaints from customers that the retail outlet had shut down leaving them high and dry on purchase orders. To add to the drama, one of USA Baby's former executives and current shareholder, Scott Wallis, has filed a 104-page lawsuit against the company's founder and numerous other defendants, including franchisees, their

attorneys and law firms - all with the blessing of the USA Baby's board of directors. The charges include racketeering, theft of trade secrets, tort of misappropriation of trade secrets, trademark infringement, federal and state anti-trust violations, false advertising, consumer fraud, shareholder oppression, and tortious interference with prospective advantage, to name a few. But while the plaintiff has filed his lawsuit in U.S. District Court in Illinois, no one has been served with the complaint for injunctive relief.

#### Birth of a new era

In late January, the Indiana attorney general filed a lawsuit after receiving complaints from USA Baby customers. Debora and David Spahn and their franchise entity, DDS Babies Inc., are accused of contracting and receiving money from customers, but not providing products promised. It alleges they violated the Deceptive Consumer Sales Act and Knowing and Intentional Violations of the Deceptive Consumer Sales Act. The AG is seeking restitution of \$5,000 for each act and penalties of \$500 per act.

In an interview with TheIndyChannel.com, the husband-and-wife franchisees said although they had to close their store they were working with the customers on their orders. They revealed they would have to file for Chapter 7 bankruptcy, adding they more than likely would lose their home and vehicles. On the same day of that interview and the filing of the lawsuit by Indiana's AG, USA Baby's Web site contained the following testimonial:

Here's what several of our franchisees have to say:

*Debbie Spahn, who with her husband Dave, opened the USA BABY franchise in Indianapolis, Indiana, reinforces USA BABY's corporate values. "Providing great customer service and meeting demand is the most challenging part. You want to keep your word, while at the same time depending on your various manufacturers, etc. However, the support from USA BABY corporate is incredible. We are like a big group united under a common umbrella. And, the reward is when the parents bring the baby back! Putting in about 70 hours a week during the development of their store is one entrepreneurial effort Debbie calls, "hard work," but she also feels there's another reward: "Out of all USA BABY locations, ours is consistently in the Top 20." - Debbie Spahn, Indianapolis, Indiana, Co-owner 1 USA BABY Store*



Janet Sparks is the former publisher of Continental Franchise Review, an industry newsletter that covered the franchise

The site at that time also stated USA Baby is currently seeking franchise partners. It listed targeted opportunities available in 14 states, including Ohio. When called, the majority of registration states reported USA Baby was not registered to sell franchises. They said they had either abandoned their registration or had not completed the registration process as of 2005 or 2006.

With approximately 60 stores owned by 40 franchisees, the system is facing additional challenges. Although the involuntary bankruptcy petition claims breach of subscription agreement and seeks a combined total of \$122,875, USA Baby has now agreed to go into voluntary bankruptcy.

A new list of creditors includes banks, companies and vendors, in addition to two franchisee groups represented by separate attorneys. On January 30, 2009, a trustee was appointed under Chapter 11 to step into the shoes of USA Baby's management and run the operation.

In an effort to find out what effect the bankruptcy will have on the pending litigation and the operations of the franchisees, telephone calls were made to the

newly appointed trustee, but were not returned.  
community for more than 30  
years before being acquired  
by Franchise Times  
Corporation.

Attorneys representing the franchisees were contacted, but they would only confirm  
there was litigation.

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