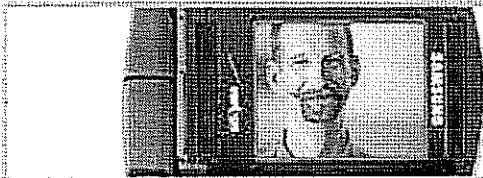


EXHIBIT 3



Jude Munn,
Network Specialist...



boston.com **Business**

your connection to **The Boston Globe**

Home News A&E **Business** Sports Travel Your Life Cars Jobs Personals Real Estate Sign In | Register Now
 Personal Tech Markets Your Money Technology Healthcare Columnists Latest news Message Boards

HOME > BUSINESS

Arguments spread thick The Boston Globe

Rivals aren't serving same food, judge rules

By Jenn Abelson, Globe Staff | November 10, 2006

A burrito is not a sandwich.

That's the culinary ruling of a Worcester judge, ending, for now, a food fight between Panera Bread Co. and Qdoba Mexican Grill.

In issuing his decision, which blocks Panera Bread's attempts to keep the burrito maker off its turf, Worcester Superior Court Judge Jeffrey A. Locke relied on testimony from Cambridge chef Chris Schlesinger and a former high-ranking USDA official, not to mention the Webster's Third New International Dictionary.

The burrito brouhaha began when Panera, one of the country's biggest bakery cafes, argued that owners of the White City Shopping Center in Shrewsbury violated a 2001 lease agreement that restricted the mall from renting to another sandwich shop. When the center signed a lease this year with Qdoba, Panera balked, saying the Mexican chain's burritos violate its sandwich exclusivity clause.

Not so, Qdoba countered, submitting affidavits from high-profile experts in the restaurant and food industry. "I know of no chef or culinary historian who would call a burrito a sandwich," Schlesinger said in his affidavit. "Indeed, the notion would be absurd to any credible chef or culinary historian."

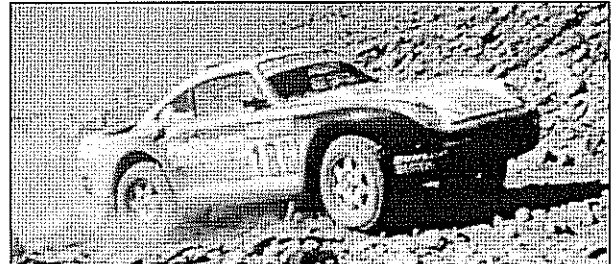
ARTICLE TOOLS

- PRINTER FRIENDLY
- SINGLE PAGE
- E-MAIL TO A FRIEND
- BUSINESS RSS FEED
- REPRINTS & LICENSING
- SHARE ON FACEBOOK
- SAVE THIS ARTICLE
powered by Del.icio.us

MORE:

Business section
 Latest business news

ADVERTISEMENT



The first supercar.

Behind every Porsche innovation is a legend.

Roll over to discover
 the legend ▶



PORSCHE

Related:

YOU DECIDE: Sandwich or not?

In his ruling, Locke cited Webster's definition of a sandwich and explained that the difference comes down to two slices of bread versus one tortilla: "A sandwich is not commonly understood to include burritos, tacos, and quesadillas, which are typically made with a single tortilla and stuffed with a choice filling of meat, rice, and beans," he wrote.



Panera spokesman Mark Crowley declined to discuss the matter or say whether the St. Louis company planned to appeal the ruling. Mitchell Roberts , manager of the franchise group that runs the Shrewsbury Panera, could not be reached for comment yesterday.

"We were surprised at the suit because we think it's common sense that a burrito is not a sandwich," said Jeff Ackerman , owner of Qdoba franchise group, known as Chair 5 Restaurants, which plans to open the eatery next year. "We're just delighted that the experts and judge saw it the same way we did."

The case, observers say, is less about common sense and more about the high stakes of the Massachusetts restaurant market. Panera Bread, as the established player in the region with 31 locations, is trying to fend off upstart Qdoba, which plans to build at least nine new stores in the market next year, up from eight now. Panera serves up fresh-baked artisan breads and sandwiches, while Qdoba is known for its signature burritos .

"It shows you how competitive the business is when a bakery cafe feels like it's in direct competition with a Mexican chain," said Ron Paul , president of Technomic Inc., a restaurant consulting firm in Chicago. "They're fighting for a share of the stomach." [Continued...](#)

1 2 [Next](#) ▶

Ads by Google

what's this?

[Going to Panera Bread?](#)

Use this coupon and save Big! Terms Apply. Limited Avail.
www.PaneraBreadCoupons.com

[Free \\$500 Panera Bread](#)

Good At Any location or Online Take Our Short Survey
path.pureadstracking.com/

[Panera bread](#)

Browse a huge selection now. Find exactly what you want today.
www.eBay.com

MORE:

[Business section](#) | [Latest business news](#) | [Globe front page](#) | [Boston.com](#)

SIGN UP FOR: [Globe Headlines e-mail](#) | [Breaking News Alerts](#)

LATEST BUSINESS NEWS

BOSTON.COM'S MOST E-MAILED

- ▶ [O'Malley draws line with Democrats](#)
- ▶ ['Green mortgages' taking root](#)
- ▶ [Hot new T-shirts, with icing on top](#)
- ▶ [Pho with a following](#)
- ▶ [Tufts fires student activity director accused of embezzling at least \\$300K](#)
- ▶ [See full list of most e-mailed](#)

SEARCH THE ARCHIVES



▶ [Advanced search / Historic Archives](#)

ADVERTISEMENT

▶ **Get 50% off Boston Globe home delivery.**
Order now!
www.bostonglobe.com/articlelink

PRINTER FRIENDLY SINGLE PAGE E-MAIL TO A FRIEND AVAILABLE RSS FEEDS MOST E-MAILED REPRINTS & LICENSING



Mansfield Store Grand Opening, November 16-18



Vote for the Boston Music Awards nominees!



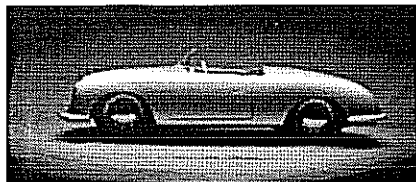
Get your FREE copy of Lola starting Nov. 16!



Let your new home find you with email alerts

[feedback form](#) | [help](#) | [site index](#) | [globe archives](#) | [rss](#)

© 20 The New York Times Company



The Number One.

Behind every Porsche innovation is a legend.

Roll over to discover the legend >



PORSCHE

boston.com **Business**

your connection to **The Boston Globe**

Home News A&E **Business** Sports Travel Your Life Cars Jobs Personals Real Estate

Sign In | Register Now

Personal Tech Markets Your Money Technology Healthcare Columnists Latest news Message Boards

HOME > BUSINESS

Arguments spread thick

The Boston Globe

November 10, 2006

Page 2 of 2 -- The fight began earlier this year when Panera learned that the owners of White City Shopping Center were in negotiations to lease space to Qdoba. Panera, citing the exclusivity clause in its lease, sought assurances that White City would not rent to the Mexican chain, saying its burritos, tacos, and quesadillas were all types of sandwiches, according to court papers.

But the landlords refused, and in August they agreed to lease about 2,100 square feet to Qdoba, which planned to spend more than \$300,000 on construction. A month later, the landlords sought a court ruling that renting to Qdoba would not breach its lease with Panera.

In turn, Panera filed a counter-claim trying to stop Qdoba from moving into the neighborhood. Qdoba rolled out an all-star line-up of food experts to testify that a burrito is just a burrito.

Schlesinger explained that a sandwich is of "European roots" and generally recognized as "two pieces of leavened bread," while a burrito is "specific to Mexico" and typically contains hot ingredients rolled into a flat unleavened tortilla.

Schlesinger, whose All Star Sandwich Bar includes items such as the Pastraminator and Meat Loaf Meltdown, also features hot dogs -- though they are on the menu with this disclaimer: "not a real sandwich, but a close friend."

ARTICLE TOOLS

- PRINTER FRIENDLY
- SINGLE PAGE
- E-MAIL TO A FRIEND
- BUSINESS RSS FEED
- REPRINTS & LICENSING
- SHARE ON FACEBOOK
- SAVE THIS ARTICLE

powered by Del.icio.us

MORE:

Business section
Latest business news

Related:

YOU DECIDE: Sandwich or not?

Judith A. Quick, who previously worked as a deputy director of the Standards and Labeling Division at the US Department of Agriculture, said in her affidavit: "The USDA views a sandwich as a separate and distinct food product from a burrito or taco."

Panera, in court filings, argued for a broad definition of sandwich, saying a flour tortilla qualifies as bread and a food product with bread

ADVERTISEMENT



The ignition is on the left.

Behind every Porsche innovation is a legend.

Roll over to discover
the legend >



PORSCHE



and a filling is a sandwich.

Ultimately, the judge ruled against Panera's request to stop Qdoba from moving into the shopping center. In his eight-page ruling released last week, Locke said Panera had not stipulated that burritos and tacos be covered in the exclusivity clause. Moreover, Panera failed to show that its survival was dependent on preventing Qdoba from opening.

Panera has up to 30 days to file an appeal.

"This was a very important case for us," said Lawrence Green, a lawyer with Burns & Levinson LLP, which represented Qdoba. "Panera frankly got a bit greedy here. What are they afraid?"

Jenn Abelson can be reached at abelson@globe.com.

© Copyright 2006 Globe Newspaper Company.

[◀ Previous](#) [1](#) [2](#)

Ads by Google

what's this?

Going to Panera Bread?

Use this coupon and save Big! Terms Apply. Limited Avail.
www.PaneraBreadCoupons.com

Free \$500 Panera Bread

Good At Any location or Online Take Our Short Survey
path.pureadstracking.com/

Panera bread

Browse a huge selection now. Find exactly what you want today.
www.eBay.com

LATEST BUSINESS NEWS

BOSTON.COM'S MOST E-MAILED

- ▶ [O'Malley draws line with Democrats](#)
- ▶ ['Green mortgages' taking root](#)
- ▶ [Hot new T-shirts, with icing on top](#)
- ▶ [Pho with a following](#)
- ▶ [Tufts fires student activity director accused of embezzling at least \\$300K](#)
- ▶ [See full list of most e-mailed](#)

SEARCH THE ARCHIVES



▶ [Advanced search / Historic Archives](#)

ADVERTISEMENT

▶ **Get 50% off Boston Globe home delivery.**
Order now!
www.bostonglobe.com/articlelink

MORE:

[Business section](#) | [Latest business news](#) | [Globe front page](#) | [Boston.com](#)

SIGN UP FOR: [Globe Headlines e-mail](#) | [Breaking News Alerts](#)

[PRINTER FRIENDLY](#) [SINGLE PAGE](#) [E-MAIL TO A FRIEND](#) [AVAILABLE RSS FEEDS](#) [MOST E-MAILED](#) [REPRINTS & LICENSING](#)



Mansfield Store Grand Opening, November 16-18



Vote for the Boston Music Awards nominees!



Let your new home find you with email alerts



Get discounted tickets to the events you love!

[feedback form](#) | [help](#) | [site index](#) | [globe archives](#) | [rss](#)

© 20 The New York Times Company

Save 50% on home delivery!

[click here](#)