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**Full Plate: Co-Chief Executives Jeff Weinstein and Craig Albert at the West Hollywood Counter in an October photo.**

# Tall Order

## DINING: Four franchises fold after Counter redesigns menus, restaurants in bid to compete in gourmet burger space.

**By SUBRINA HUDSON** *Staff Reporter*

When **Jeff Weinstein** founded his customizable burger joint the **Counter** 11 years ago, it was a hit, getting mentions from GQ magazine as one of "20 burgers to eat before you die" and a thumbs up from **Oprah Winfrey**.

By last year, the chain had 38 franchised and three company-owned locations, mostly in California, and revenue estimated at more than $70 million.

But keeping things fresh is proving a bit more of a challenge. In the face of greater competition in the upscale burger space last year, Weinstein and co-Chief Executive **Craig Albert** embarked on a redesign of both the chain's look and menu. It was a costly process, anywhere from $50,000 to $150,000 a store, and franchisees were supposed to pay the tab as part of their franchise agreement.

Now, four franchised locations have shut down, leading to a dispute between their operators and the parent company over obligations under the franchise agreement.

Whether the closures were related to the added redesign costs, poor operational oversight or pressures from an increasingly competitive market are unclear. Neither the principals of the company nor the two franchisees that closed their operations would talk about the matter, which has landed in court.

**LABJ POLL**

Is the market for gourmet burgers saturated or is there still room for growth?
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**Barry Kurtz**, franchise law attorney with Encino firm **Lewitt Hackman**, said such disputes can almost be expected with once-hot franchise restaurants.

"There's usually a big splash when they open," said Kurtz. "They start opening more restaurants and getting more coverage and then there's a point where between the number of restaurants and the competition … the petals start coming off the rose."

Competition is stiff in the restaurant business, Kurtz said, and the Counter is but one of a slew of gourmet burger restaurants that call Los Angeles home, including **Umami Burger**, **Golden State** and **Slater's 50/50**.

Darren Tristano, executive vice president of Chicago market research firm Technomic Inc., said one of the Counter's advantages was that it was an early entrant to the gourmet burger craze. But over the years, he hasn't seen the company grow as strongly outside of California compared with its counterparts.

Technomic estimated Counter's 2013 sales at $70.4 million, up 4 percent from the previous year.

He said the burger industry, dominated by quick-service chains like **McDonald's** and **Wendy's** but with a lot of smaller fast-casual players like the Counter, had U.S. sales of $75 billion last year, a modest 1 percent more than the prior year. When adjusted for inflation, sales actually declined.

Tristano said the fast-casual burger segment only makes up about $3 billion, or 4 percent, of the total industry. And while that area grew by 11 percent last year, the growth was fed by more store openings, not increases in same-store sales.

"So when you look at the burger industry as a whole, it's become increasingly saturated," he said, adding that "even though there's continued demand for better burgers, everybody is doing burgers."

He said even more new-burger concepts are causing some cannibalization.

### Custom built

Weinstein founded the Counter in 2003 and Albert, a former investment banker joined two years later. The pair began franchising in 2006, mostly to California operators, but with locations as far flung as Manhattan's Times Square, Ireland and Dubai.

In response to customer feedback and greater competition, the chain last year embarked on a store and menu redesign.

"What customers wanted 10 years ago is different from what customers want now," Albert said in an interview last year. "It's time we take a look at the look and feel of our stores."

The design changes were dramatic departures from the look and feel of the chain to that point. Albert said last year that the new look, which moved away from the chain's signature cool, industrial feel toward a warmer environment with brick walls, wood floors and chairs with wooden seats, would be in place in all locations this year.

The Counter asked franchisees to foot the bill of the renovations as part of their franchise agreement, with costs ranging from $50,000 to $150,000 a store depending on size. That's on top of their original agreement, in which franchisees are required to open three stores, at a fee of $50,000 each, and bear the cost of build-out, which can run from $750,000 to $2.4 million per store, depending on size and if there is a liquor license. Not all franchisees paid the same amounts.

Those differences came to light in the fight the Counter has initiated with franchisees that abruptly shut down their operations.

The company alleges in a case filed this month in Los Angeles Superior Court that franchisees **Thomas** and **Wan Kyu Yoo** breached their contract after closing three locations in January. Under the agreement they signed in 2010, the restaurant owners agreed to spend a minimum $2,500 on "grand-opening advertising and promotion" in the first 90 days of opening, a $200,000 initial

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# Dining: Franchise Fee May Be Tough to Swallow

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franchise fee for the development of up to five Counter locations as well as an estimated 8 percent fee from gross sales for royalty and advertising costs, the suit says.

The Yoos, owners of **CTCY Burger**, operated three franchises in deals dating to 2006: Carlsbad, their earliest; Del Mar, in a license struck in 2010; and San Diego, which it signed up for in 2011. All three, the Counter's complaint says, were closed in January. No reasons were given in court filings, to which CTCY has yet to respond.

The company has also sued franchise partners **John Shapiro** and **Curtis Magleby**, saying they owe more than $480,000 in damages for what it alleges is a breach of contract after the owners closed their Hermosa Beach location in November. That 2011 agreement, included in court filings, outlined a minimum $15,000 spend for grand-opening advertising and promotion, a $50,000 initial franchise fee and the same 8 percent royalty.

The Hermosa Beach franchise was the second operated by Shapiro and Magleby – their first, in Torrance, remains open – and was open for just 21 months before they notified the Counter that they were shutting it down and selling their location.

Shapiro and Magleby have not responded to the Counter's complaint, and no reasons were given for the closure in the company's suit.

Neither set of franchisees responded to requests for comment.

Kurtz, the franchise attorney, said franchisees are sometimes able to negotiate with the company to change the terms of their agreement, and it's generally the same for those who sign up during the same registration period or year.

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DARREN TRISTANO,
Technomic Inc.

While California law is slightly inconsistent, he said, if a franchisee were to sign a 10-year contract but close its store before the term expired, it might still be liable for the fees due for the remaining eight years.

**Jerry Prendergast**, a restaurant consultant with West L.A.'s **Prendergast & Associates**, said the Counter is an expensive franchise to run based on several agreements he's read.

"I'm paying for waiters. I'm paying for busboys. I have a bartender working, making drinks," he said, noting it's more costly than having customers order at a counter.

Technomic's Tristano said because of the high operating and labor costs there needs to be a higher return to attract franchisees.

"Very often, like in Quiznos, Krispy Kreme and others, the franchisees weren't successful," he said. "And as a result, go against the parent. But you don't often see a parent company suing a franchisee for (alleged) breach of contract."