

Maris Strikes Out in Eleventh Circuit Decision

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Antitrust

Antitrust claims remain difficult to sustain against franchisors. The Eleventh Circuit upheld a directed verdict on a beer distributor's Sherman Act claim in *Maris Distributing Co. v. Anheuser-Busch, Inc.*, Bus. Franchise Guide (CCH) ¶ 12,406 (11th Cir. 2002). The distributor alleged that Anheuser-Busch violated section 1 of the Sherman Act by prohibiting its distributors from being owned, in whole or in part, by the public, thereby damaging the resale price for equity interests. Although the relevant market is typically determined as a matter of law, the definition of the market was presented to the jury before the district court directed a verdict in favor of Anheuser-Busch. Distributor Maris contended that Anheuser-Busch had market power based on its significant market share in the manufacture and sale of beer. Maris argued that "in cases involving vertical restraints imposed by a manufacturer on distributors, market power is determined by reference to the manufacturer's share of products in the market, not its share of ownership in distributors." The court of appeals accepted the district court's findings that Anheuser-Busch did not have market power in the alleged relevant market for the purchase and sale of equity ownerships in beer distributorships given its 1 to 3 percent share of that market. The appellate court also affirmed the finding that it was contract power, not market power, that restricted resale prices and approved the directed verdict on that basis.

Plaintiffs in *Mathis v. Exxon Corp.* abandoned their Sherman and Clayton Acts claims in favor of a Texas breach of contract theory. Bus. Franchise Guide (CCH) ¶ 12,398 (5th Cir. 2002). Nevertheless, the case is instructive on anticompetitive behaviors. The Fifth Circuit affirmed a jury verdict awarding fifty-four gasoline station franchisees compensatory damages of \$5,723,657 and court-awarded counsel fees of \$2,289,462 against Exxon. The jury concluded that Exxon breached its UCC contractual duty of good faith by setting artificially high prices to drive the franchisees out of business and replace them with company-operated stores. The franchisees' expert testified that the price to franchisees was four cents higher than what was commercially reasonable and that 75 percent of the franchisees' competitors could purchase

gasoline at a lower price. The franchisees produced evidence supporting an Exxon marketing strategy to reduce dealer stores in favor of company-operated stores.

In *Stunfence, Inc. v. Gallagher Security*, Bus. Franchise Guide (CCH) ¶ 12,405 (N.D. Ill. 2002) (also discussed under "Fraud and Misrepresentation"), the U.S. District Court for the Northern District of Illinois refused to dismiss a Sherman Act claim against a seller of nonlethal electric fencing brought by its former distributor. Plaintiff alleged that the seller had more than a 90 percent share of the correctional and commercial markets for the fencing and unilaterally refused to deal with its former distributor in an attempt to monopolize the market. The court also refused to dismiss a Robinson-Patman Act price discrimination claim that sales of the identical products to another distributor at the same time were at a lower price. Similarly, in *INNOMED Labs, LLC v. Alza Corp.*, Bus. Franchise Guide (CCH) ¶ 12,465 (S.D.N.Y. 2002), the U.S. District Court for the Southern District of New York determined that plaintiff stated a Robinson-Patman Act case where price discrimination in the sale of cold and allergy products could be considered "contemporaneous" even though the sales were a few months apart. The court also declined to dismiss plaintiff's fraud claim based on alleged misrepresentations that performance under the contract violated no law where the performance may have violated the Robinson-Patman Act.

Arbitration

In an interesting decision on the scope of arbitration clauses, the Seventh Circuit vacated an order compelling arbitration pursuant to the Federal Arbitration Act (FAA) where the only written agreement between the parties had expired before the dispute arose. *Nissan North America, Inc. v. Jim M'Lady Oldsmobile, Inc.*, Bus. Franchise Guide (CCH) ¶ 12,427 (7th Cir. Oct. 3, 2002).

The parties' dealer agreement provided that all disputes "arising out of" the agreement were to be resolved by arbitration. The dealer agreement expired in 1999, but the parties continued doing business well past the expiration date. The relationship deteriorated and Nissan notified Jim M'Lady Oldsmobile, Inc. of its intent to terminate M'Lady as a dealer. M'Lady protested the termination before the Illinois Motor Vehicle Review Board. Nissan filed an arbitration demand and petitioned the federal court to compel arbitration under the FAA and to enjoin the board proceedings. The trial court granted the motion to compel arbitration and stayed the Board proceedings without allowing M'Lady to put on evi-

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dence of an alleged oral contract that it contended arose after expiration of the original written dealer agreement. On appeal, the Seventh Circuit ruled that the expired contract could not possibly be the basis of the parties' current dealership arrangement and thus termination of the current relationship could not, in the absence of additional evidence, relate in any way to the expired contract. The FAA requires that agreements to arbitrate be in writing, and no written agreement other than the expired one was produced. The court remanded the case for further proceedings to allow M'Lady to introduce evidence of the alleged oral contract governing the parties' relationship after the written dealer agreement expired.

The U.S. District Court for the Northern District of California granted an FAA motion to compel arbitration in *Solar Planet Profit Corp. v. Hymer*, Bus. Franchise Guide (CCH) ¶ 12,454 (N.D. Cal. 2002). Respondents were former franchisees who had operated a tanning salon in northern California pursuant to a Solar Planet license agreement. The business failed and the former licensees sued in California state court for violation of California's Franchise Investment Law, fraud, breach of contract, and negligent misrepresentation. Solar Planet sued in federal court to compel arbitration of the disputes under the license agreement's arbitration clause. Respondents opposed the motion, contending that the tanning salon license agreement violated the California Franchise Investment Law and was thus void. Respondents also argued that the FAA did not apply because the contract lacked a sufficient nexus to interstate commerce. The court disagreed, finding that the agreement's restraint on the sale of German-manufactured tanning beds in northern California was a direct nexus to interstate commerce, and that the FAA accordingly governed. The court also concluded that even if the contract was a franchise sold in violation of the California Franchise Investment Law, the agreement was "voidable, not void," and the arbitration clause therefore remained enforceable. The court made the voidable/not void distinction based on language in the California statute that allows a franchisee to rescind a contract sold in violation of that act.

A similar challenge to the enforceability of an arbitration clause based on the alleged invalidity of the franchise agreement drew a different reaction from the court in *Sam Savage Co. v. Gunderson*, Bus. Franchise Guide (CCH) ¶ 12,391 (S.D. 2002). Plaintiff Savage had purchased a Nature's 10 franchise. Nature's 10 held itself out as a franchisor offering potential franchisees an opportunity to participate in retail sales of various articles of jewelry at discounted prices. Savage signed a franchise agreement with Nature's 10 four months after the company lost its authorization to sell fran-

chises in South Dakota. The South Dakota Supreme Court determined that because the agreement was signed after the registration had expired, the agreement was unlawful from its inception. According to the court, an unlawful contract is void, not voidable.¹

In a companion case decided the same day, the South Dakota Supreme Court upheld a Nature's 10 arbitration clause in *Rossi Fine Jewelers, Inc. v. Gunderson*, Bus. Franchise Guide (CCH) ¶ 12,390 (S.D. 2002). Here the franchise agreement was executed before the franchisor's registration had expired, eliminating any question about the validity of the contract and arbitration clause. Thus, claims for breach of contract, failure of consideration, breach of the duty of good faith and fair dealing, fraud, constructive fraud, deceit, misrepresentation in the sale of a franchise, and personal liability of directors and officers were indisputably subject to arbitration. The court also rejected contentions that defendants had waived their right to arbitrate and that certain defendants were not signatories to the arbitration agreement. There was no waiver where defendants had waited only three or four months before seeking arbitration and had not engaged in extensive pretrial activity, and the nonsignatory defendants were entitled to benefit from the arbitration clause as agents of signatories.

The Alabama Supreme Court reversed the denial of a motion to compel arbitration in *General Motors Corp. v. Stokes*, Bus. Franchise Guide (CCH) ¶ 12,433 (Ala. 2002). The litigants were parties to two contracts, a dealership agreement and a later relocation agreement related to respondents' purchase of another dealer's inventory. The relocation

agreement had an arbitration clause, while the dealership agreement did not. The Alabama high court determined that the scope of the arbitration clause in the relocation agreement that called for arbitration of all disputes between the litigants "arising under or relating to the negotiation, execution, administration, modification, extension, or enforcement of the relocation agreement" was broad enough to encompass disputes over promises that General Motors allegedly made in connection with respondents' purchase of the other dealer's inventory. The court also concluded that the transaction substantially affected interstate commerce where the parties to the relocation agreement were from different states and the agreement contemplated the transfer of assets among those parties.

A franchisor's two-count complaint for breach of contract was stayed pending arbitration in *Management Recruiters International Inc. v. Maverick Resources, Inc.*, Bus. Franchise Guide (CCH) ¶ 12,418 (N.D. Ohio 2002). The court stayed the entire action, even though the franchisor's claim for failure to pay royalties and submit reports fell within a

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contractual exception and was not subject to arbitration. The court determined that plaintiff's other count, seeking a mandatory injunction requiring payment of fees and submission of reports, did not fall within any contractual exception to arbitration and had to be stayed. The federal court in Massachusetts issued a similar decision in *Original Calzone Co. v. Offidani*, where certain claims were arbitrable but others were not. Bus. Franchise Guide (CCH) ¶ 12,438 (D. Mass. 2002). Defendants argued that all claims against them as well as their defense of invalidity of the franchise agreement were arbitrable. The court concluded, based on express language in the franchise agreement, that claims relating to the validity of the agreement were for the arbitrator to decide, as were claims relating to pretermination misuse of the franchisor's trademarks. Plaintiffs' claims for monies owed were not arbitrable pursuant to express terms of the agreement, but were stayed pending the outcome of the arbitrator's decision on the validity of the agreement.

Choice of Law

A Connecticut court ruled that a terminated truck parts distributor was not entitled to the protections of the Connecticut Franchise Act although the distribution agreement had a governing law provision selecting Connecticut law, because the Connecticut Franchise Act only applies to "franchisees" with a place of business in Connecticut, and the distributor did not have a place of business there. *Diesel Injection Service Co. v. Jacobs Vehicle Equipment Co.*, Bus. Franchise Guide (CCH) ¶ 12,388 (Conn. Super. 2002) (unpublished opinion).

In *William F. Healy and Red Carpet Travel, Inc. v. Carlson Travel Network Assocs.* (also discussed under "State Franchise Disclosure/Registration Laws"), the Minnesota federal court held that the antiwaiver provisions of the Illinois Franchise Disclosure Act voided a choice-of-law clause in an Illinois franchisee's franchise agreement selecting Minnesota law. The court applied Illinois law to the agreement. 227 F. Supp. 2d 1080, Bus. Franchise Guide (CCH) ¶ 12,443 (D. Minn. 2002).

A Georgia appellate court reversed a lower court ruling that the Michigan motor vehicle law applied to a Georgia automobile dealer because the dealership agreement contained a Michigan choice-of-law provision. *Greensboro Ford, Inc. v. Ford Motor Co.*, 568 S.E. 2d 758, Bus. Franchise Guide (CCH) ¶ 12,380 (Ga. Ct. App., 2002). The court noted that the Michigan statute expressly applies only to dealers located in Michigan. It also held that under the public policy underlying the Georgia motor vehicle law and the federal Automobile Dealer's Day in Court Act, the Michigan motor vehicle law did not control. The opinion is unclear about the

practical consequences of the decision; presumably, the dealer's claim would have fared better under the Georgia motor vehicle law than the Michigan motor vehicle law.

Contract Issues

In *Dunkin' Donuts, Inc. v. Liu*, Bus. Franchise Guide (CCH) ¶ 12,392, 12,393 (E.D. Pa. 2000-02), the U.S. District Court for the Eastern District of Pennsylvania granted Dunkin' Donuts summary judgment on breach-of-contract and fraud counterclaims, finding no evidentiary support for claims that franchisees had not received contractually required operations manuals and training. The court denied the franchisor summary judgment on the termination claim. According to Dunkin' Donuts, termination was proper based on the franchisees' tax and credit reporting violations, which in turn violated the "obey all laws" provision in the franchise agreement. The court concluded that the franchisees, who relied on advice of their accountants, may not have knowingly violated the "obey all laws" provision.

In later rulings reported at Bus. Franchise Guide (CCH) ¶¶ 12,394, 12,395, the district court granted Dunkin' Donuts summary judgment on its termination for franchisees' failure to pay sublease and franchise agreement fees, and enjoined franchisees' post-termination use of Dunkin' Donuts' trademarks, rejecting the unclean hands defense. The court found it significant that the franchisees had been given the opportunity to sell their franchise,

but refused, and also held that the right of a franchisor to terminate was independent of any claims that the franchisee might have against the franchisor, including any improper motive.

A New York federal court upheld the termination of other Dunkin' Donuts franchisees, based

on standards violations. *Dunkin' Donuts v. Northern Queens Bakery, Inc.*, Bus. Franchise Guide (CCH) ¶ 12,410 (E.D. N.Y. 2001). Dunkin' Donuts had twice before sued these franchisees over health and safety violations. The prior cases were withdrawn by consent after the franchisees cured. This time, Dunkin' Donuts obtained a preliminary injunction following issuance of a termination notice based on recurring violations of standards. The court rejected the franchisees' claim that the violations were trivial, or that violations could not be timely cured because the shop was on the eve of remodeling. The court found that Dunkin' Donuts had lost the ability to control the quality of goods and services provided by the terminated franchisee under its marks, causing the threat of irreparable harm.

In another New York case, a franchisor of temporary health care staffing services survived a motion to dismiss its claims against the competitive activities of its former franchisee's president. *ATC Healthcare Services, Inc. v. South-*

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western Staffing Services, Inc., Bus. Franchise Guide (CCH) ¶ 12,400 (E.D. N.Y. 2001). The franchisor alleged that an Arizona franchisee had repudiated its franchise agreement and begun to operate an unaffiliated competitor using former staff and relatives of the franchisee's principals. The franchisor sued in New York pursuant to a venue provision in the repudiated franchise agreement, alleging that the president of the franchisee breached the agreement's noncompete covenant, misappropriated the franchisor's trade secrets, converted the franchisor's telephone number and other property, and tortiously interfered with the franchisor's client relationships. The court held that the franchisor had sufficiently alleged claims for breach of contract and tort where the successor staffing business essentially functioned as the same business entity, shared the same resources, and had the same corporate principal as the terminated franchisee. Claims against the former president in his individual capacity were proper where the president personally supervised the wrongdoing.

The Seventh Circuit upheld the dismissal of claims for improper termination and breach of contract in *Zeidler v. A&W Restaurants, Inc.*, Bus. Franchise Guide (CCH) ¶ 12,407 (7th Cir. 2002). A&W's termination of the franchise agreement was based on franchisees' abandonment of their operation. The court concluded that the franchisees were not justified in abandoning their business based on A&W's restaurant inspections, which disclosed filthy conditions.

A manufacturer of shopping cart corrals was sued under Minnesota law for terminating a distributorship contract on an unreasonable basis and without reasonable notice in *Viking Supply v. National Cart Co.*, Bus. Franchise Guide (CCH) ¶ 12,460 (8th Cir. 2002). The Eighth Circuit held that the manufacturer was excused from performing the distributorship contract because the principal purpose of the contract was frustrated by a national retailer's refusal to purchase from the distributor. No evidence supported the distributor's argument that the manufacturer solicited the retailer to eliminate distributors. Instead, the evidence showed that the retailer wanted to deal directly with manufacturers. The court also held that the manufacturer did not breach the contract by terminating it, because it was either terminable at will or had expired before termination.

In *7-Eleven, Inc. v. Chaudhry*, Bus. Franchise Guide (CCH) ¶ 12,414 (D. Mass. 2002), the franchisee operated three convenience stores and failed to maintain a minimum net worth of \$10,000 at each store as the franchise agreement required. Upon termination, each store was audited and each showed an unpaid balance. The audits demonstrated that each of the stores had transferred inventory to other stores operated by the principals of the franchisee in violation of the Massachusetts Uniform Fraudulent Transfer Act. The

court held that even though the fraudulent transfers had occurred, the transfers may not have been in willful or knowing violation of the law, which would trigger a possible multiple damage award. Instead, the court found the damages for the fraudulent transfers to equal the amount of the unpaid balances and assessed those damages against the guarantors.

In *Dennehy v. Cousins Subs Systems, Inc.*, Bus. Franchise Guide (CCH) ¶ 12,468 (D. Minn. 2002), the Dennehys entered into a development agreement for a period of ten years but fell consistently short of the projected and required number of openings. The Dennehys sued, claiming that Cousins had rejected qualified buyers, undercut their sales efforts, ceased advertising, and misled the developer regarding renewal. Cousins moved to dismiss. Applying Minnesota law, the court held that the allegations could constitute arbitrary and unreasonable behavior that deprived the developer of the benefit of the bargain and therefore violated the duty of good faith and fair dealing. The court dismissed the developers' claim that an implied in fact contract existed to renew because it would violate the statute of frauds.

Damages

In what is likely a one-of-a-kind decision, the Ninth Circuit upheld an award of nearly \$4 million in damages based on lost franchise fees for conversion of a franchisor's truck stop

architectural plans in *Flying J, Inc. v. Central CA Kenworth*, Bus. Franchise Guide (CCH) ¶ 12,453 (9th Cir. 2002). Flying J, Inc., sued defendants for conversion and copyright infringement for their wrongful acquisition of Flying J's architectural plans. The plans were not available to the general

public and could be acquired only with the purchase of a Flying J franchise. At trial, the jury found in favor of Flying J and awarded it lost-profit damages in an amount equal to the initial franchise fee for a Flying J franchise, plus continuing royalties on the products that defendants sold at their truck stop during the period of infringement. The Ninth Circuit upheld the jury's award, rejecting appellants' contention that the award was too speculative. According to the court, the evidence showed that the architectural plans were an integral part of the value of the franchise. The "market value" of the franchise was a legitimate measure of damages for infringement and measured what a willing buyer would have been reasonably required to pay a willing seller for the copyrighted work. There was no evidence available to the jury to apportion the value of the architectural plans at less than the full value of the franchise.

In *Villager Franchise Systems Inc. v. Thakore*, the damages to be awarded to a hotel franchisor for lost future fees from a terminated franchisee constituted the only disputed issue on a motion for summary judgment. Bus. Franchise Guide (CCH)

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¶ 12,404 (S.D. Ind. 2002). There was no dispute that the franchisee had breached the franchise agreement and that the termination only one month into the twelve-year term was warranted. The franchisor claimed that it was entitled to all fees that the franchisee would have paid it for the remainder of the twelve-year term of the franchise agreement. Under Indiana law, the court held, a party injured by a breach of contract is limited in his or her recovery to loss actually suffered and is not entitled to be placed in a better position than he or she would have occupied if the breach had not occurred. Under the franchisor's theory of damages, the court ruled, it would be in a better situation than if the breach had not occurred. The court observed that the franchisor would have the franchisee's fees through 2012 without the costs of providing any support at all to the franchisee's business, while retaining the right to establish a new franchise in the same area. The franchisor had a duty to mitigate its damages by trying to establish another franchise in the area, the court held. Since the damages that the franchisor suffered as a result of the breach were disputed, the court denied summary judgment on premature termination damages.

Fraud and Misrepresentation

A motorcycle manufacturer successfully moved for summary judgment on fraud claims brought by one of its dealers in *M&D Cycles, Inc. v. American Honda Motor Co.*, 208 F. Supp. 2d, Bus. Franchise Guide (CCH) ¶ 12,384 (D.N.H. 2002). The dealer, M&D, claimed that Honda employees gave it false and misleading information regarding whether it had designated a nearby county as open for a new dealership and neglected to inform it that a new dealer had been approved. In its suit, brought after a new dealership opened in the county, M&D alleged that it had acquired additional inventory, advertised in the county, and expanded its showroom and service area to serve customers from the county in reliance on the employees' misrepresentations, thereby suffering lost profits, loss in value to its dealership, and other injury. In moving for summary judgment on the fraud claim, Honda argued that M&D could not have justifiably relied on the employees' statement, because the parties' agreements explicitly provided that only certain specific Honda personnel were authorized to make commitments on Honda's behalf. The court agreed, and granted Honda summary judgment.

The U.S. District Court for the Northern District of Illinois rejected a terminated distributor's fraud claim in *Stunfence, Inc. v. Gallagher Security (USA) Inc.*, Bus. Franchise Guide (CCH) ¶ 12,458 (N.D. Ill. 2002). The court ruled that because the distributor's complaint did not identify any individual representative of the manufacturer who made any of the alleged misrepresentations of future conduct, it failed to

allege with sufficient particularity a scheme to defraud. In addition, the distributor asserted facts that contradicted its own contention that the manufacturer never intended to make good on the alleged representations by admitting that the manufacturer did not act contrary to the alleged representations until some time after the parties executed the distribution agreement. The manufacturer's initial compliance with the representations contradicted the alleged existence of an intent not to comply with them, the court held.

The Eighth Circuit affirmed the dismissal of a buying club franchisee's claims for fraudulent inducement to enter a franchise agreement in *Harry D. Meehan, Jr. v. United Consumers Club Franchising Corp.*, 312 F. Supp. 2d 909, Bus. Franchise Guide (CCH) ¶ 12,467 (8th Cir. 2002). The franchisee alleged that the franchisor knowingly misrepresented expected earnings, success rates, pricing, warranties, support, and service in order to induce him to purchase a franchise. However, the court agreed with the district court that the express disclaimers in the franchise agreement and UFOC precluded the franchisee from proving justifiable reliance on the alleged misrepresentations.

In another fraudulent inducement case with a similar result, *Minuteman Press International, Inc. v. William F.*

Matthews, a Minuteman print shop franchisee tried to allege fraudulent inducement to execute the parties' franchise agreement as an affirmative defense against Minuteman's action for breach of contract and nonpayment of royalties. 232 F. Supp. 2d 11, Bus. Franchise Guide (CCH) ¶ 12,466

(E.D. N.Y. 2002). The franchisee claimed that before he signed the franchise agreement, employees of the franchisor represented to him that the royalties he paid would never exceed \$1,200, and that he relied on this representation in deciding to purchase the franchise. The U.S. District Court for the Eastern District of New York granted summary judgment against the franchisee because the agreement clearly stated that it was the entire agreement between the parties and no modifications could be made by Minuteman's employees.

Jurisdiction

Courts continue to find personal jurisdiction over out-of-state franchisees in the franchisor's home state. In one recent case, *Kitchen Investment Group, Inc. v. K.B. Restaurants, Inc.*, Bus. Franchise Guide (CCH) ¶ 12,385 (Minn. Dist. Ct. 2002), a state court held that Minnesota could exercise personal jurisdiction over an out-of-state franchisee based on a forum selection clause, even though the franchisor itself had been sold and no longer operated in that state. The court found that the franchisee had consented to jurisdiction in Minnesota based on language in the franchise agreement, and concluded that nothing in the franchisee's home state

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law of North Dakota voided that forum selection clause. The court also found that it could exercise jurisdiction over defendants even in the absence of the forum selection clause because they had minimum contacts with the state. Defendants initiated contact with the franchisor in Minnesota, traveled to the state to meet with the franchisor, attended training in Minnesota, and paid fees and submitted reports to the franchisor in Minnesota before the franchisor was sold. The court found unavailing defendants' arguments that its contacts with Minnesota had diminished and that plaintiffs were not residents of Minnesota. Neither fact affected the personal jurisdiction analysis. According to the court, decreasing contacts with the state did not destroy jurisdiction, and Minnesota maintained an interest in enforcing Minnesota contracts even after the contracting party transferred its interest to an out-of-state entity.

The U.S. District Court for the Northern District of Illinois determined that it had personal jurisdiction over a California franchisee even where there was no forum selection clause in the franchise agreement. *International Truck and Engine Corp. v. Dow-Hammond Trucks Co.*, Bus. Franchise Guide (CCH) ¶ 12,469 (N.D. Ill. 2002). The franchisee had the requisite contact with Illinois based on its dealings with the Illinois franchisor, including contract negotiations, travel to Illinois in furtherance of that contract, submission of warranty claims to Illinois, and execution of three additional license agreements with the Illinois franchisor. The court rejected defendant's contention that the court could not exercise jurisdiction because termination disputes were within the exclusive jurisdiction of the California New Motor Vehicle Board, concluding that whether notice was required or had been given under that statute was immaterial to the determination of personal jurisdiction.

A forum selection provision within an arbitration clause was sufficient to justify the exercise of personal jurisdiction over out-of-state franchisees in *Doctor's Associates, Inc. v. Keating*, Bus. Franchise Guide (CCH) ¶ 12,413 (Conn. App. Ct. 2002). The court upheld the lower court's ruling that the arbitration clause, which required arbitration in Bridgeport, Connecticut, and application of Connecticut law, was the necessary predicate for personal jurisdiction. By consenting to these provisions, the court concluded, defendants manifested their consent to the jurisdiction of a Connecticut court. To hold otherwise would leave one party unable to compel arbitration and thereby nullify the arbitration clause.

In a case involving removal jurisdiction, the U.S. District Court of Maryland remanded an action to state court after deciding that nondiverse parties had not been fraudulently joined. *Delmarva Sash & Door Co. of Maryland, Inc. v. Andersen Windows, Inc.*, Bus. Franchise Guide (CCH)

¶ 12,463 (D. Md. 2002). A terminated distributor and several of its shareholders sued the manufacturer and its wholly owned subsidiary. Defendants claimed that the shareholder plaintiffs and the subsidiary were fraudulently joined to avoid removal to federal court. To establish fraudulent joinder, defendants must demonstrate that "there is no possibility that the plaintiff would be able to establish a cause of action against the in-state defendant in state court." Defendants could not meet this burden where there were several possible theories for direct liability of the subsidiary and where the shareholder defendants had asserted a distinct injury arising from their inability to sell their shares of the distributorship.

Motor Vehicle Laws

In *Hale Trucks of Maryland, LLC v. Volvo Trucks North America, Inc.*, Bus. Franchise Guide (CCH) ¶ 12,434 (D. Md. 2002), a Maryland federal court granted Volvo's motion for summary judgment terminating the dealer because its wholesale financing was cancelled and was not restored within the thirty-day period required in the agreement. Volvo was also justified in terminating the dealership based on insufficient capital investment, the concealment of material facts in the operating reports, and the failure to maintain its inventory of new trucks.

The Alabama Supreme Court reversed and remanded a jury verdict of \$9,096,000 in damages and \$2,830,000 in attorneys' fees awarded to a dealership in *Serra Chevrolet, Inc. v. Edwards Chevrolet, Inc.*, Bus. Franchise Guide (CCH) ¶ 12,415 (Ala. 2002). The dealer had sued the manufacturer

under the Alabama Motor Vehicle Dealer Law alleging that vehicles were allocated in an arbitrary, capricious, and discriminatory manner beginning in 1991. The trial court dismissed damage claims that arose before December 1994 based on the four-year statute of limitations.

The trial court permitted

the case to go to the jury for damages accruing after December 1994, even though the damages were based on the allocation system that started in 1991. The supreme court held that because claims about the alleged wrongful conduct were time barred, the damage claim that flowed directly from that conduct was also time barred. The court also concluded that no evidence existed that damages were caused by any conduct other than the allocation system adopted in 1991.

Petroleum Marketing Practices Act (PMPA)

The Ninth Circuit upheld franchise terminations in two PMPA cases. In *Nahabet v. Chevron Products Co.*, Bus. Franchise Guide (CCH) ¶ 12,441 (9th Cir. 2002) (not for publication), the franchisee's failure to maintain and produce required "Z reports" was a material breach of contract, giving Chevron the right to terminate the franchise. Although not

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required to, Chevron had given the franchisee an opportunity to cure. The franchisee failed to demonstrate how other documents submitted to Chevron satisfied the Z report requirement, thus failing to carry its burden in opposition to Chevron's motion for summary judgment.

In *Arco Products Co. v. Stewart & Young*, Bus. Franchise Guide ¶ 12,409 (9th Cir. 2002), Arco terminated the franchisee for violating a contractual prohibition against transfer and resale of gasoline. The rationale for this provision was to prevent reverse palming off, that is, the sale of Arco-brand gasoline under a different name, which could enhance the reputation of a competitor. The court held that enforcement of such a provision was reasonable, necessary, and consistent with the materiality requirements of the PMPA. The court rejected claims that the contract was unenforceable as anti-competitive because the franchisee could not demonstrate an illegal vertical restraint, which would require a showing that Arco had market power or a controlling share of the relevant market. The court also rejected claims that the franchise agreement was a contract of adhesion under California law because the prohibitions were explicit in the agreement and the franchisee had sufficient notice of the prohibitions.

The Sixth Circuit also upheld a termination under the PMPA in *PDV Midwest Refining, LLC v. Armada Oil and Gas Co.*, Bus. Franchise Guide (CCH) ¶ 12,408 (6th Cir. 2002). In affirming partial summary judgment and later bench trial findings for PDV, the court rejected arguments that the franchisor's corporate restructuring and voluntary sale of its trademark were not a "loss of the franchisor's right to grant the right to use the trademark" as defined in the PMPA. The court also rejected arguments that the restructuring transactions were shams or cover-ups for what was really a market withdrawal, finding no evidence to support the franchisee's theory.

Termination without the normally required ninety days' notice was found to be lawful in *Koylum, Inc. v. Peksen Realty Corp.*, Bus. Franchise Guide (CCH) ¶ 12,435 (E.D.N.Y. 2002). The PMPA provides an exception to the ninety-day notice rule when it would not be "reasonable for the franchisor to furnish notification." The gas station dealer was misbranding gasoline, selling gasoline purchased from other suppliers under the franchisor's brand name. This, the court held, justified termination without notice because it violated the franchisor's property rights and perpetuated a fraud on the public.

The First Circuit ruled that a federal district court had subject matter jurisdiction over a claim for wrongful termination brought by a distributor of marine supplies under the PMPA. *Seahorse Marine Supplies, Inc. v. Puerto Rico Sun Oil Co.*, 245 F.3d 68, Bus. Franchise Guide (CCH) ¶ 12,373 (1st Cir. 2002). The manufacturer argued that the PMPA did not apply to a distributor of marine fuel, but only to a "motor fuel"

dealer. The statute defined "motor fuel" as "gasoline and diesel fuel of a type distributed for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads and highways." The court held, however, that under the PMPA's definition of "motor fuel," the fuel at issue need only be "of a type" used by land vehicles. The diesel fuel sold to the distributor was of a type used in ships, but also in trucks and other motor vehicles, a representative of the manufacturer testified. Because the fuel could have been used for land vehicles, the court ruled, the plain language of the statute covered the relationship at issue. Having held that the PMPA applied, the court went on to rule that the manufacturer's notice of termination violated the requirements of the PMPA in a number of respects, affirmed the judgment in favor of the distributor, and awarded it half of its costs.

The plaintiff in *Alafaya Crossing, Inc. v. Exxon Mobil Corporation*, Bus. Franchise Guide (CCH) ¶ 12,457 (M.D. Fla. 2002), a former franchisee, obtained a preliminary injunction under the PMPA prohibiting Exxon Mobil Corporation from interfering with its business operations. The court concluded that the franchisee had raised serious questions whether Exxon Mobil's offer to sell the premises was "bona fide" under the PMPA. As required by the statute, Exxon Mobil had offered to sell the land, building, and certain equipment to Alafaya upon termination. Exxon Mobil refused, however, to provide Alafaya with a copy of its appraisal. The franchisee had its own appraisal

prepared, reflecting a value \$200,000 less than the price that Exxon Mobil offered. The evidence showed that Exxon Mobil's appraisal was prepared by Arthur Andersen pursuant to an agreement with Exxon Mobil that required appraisals to be prepared based on telephone inquiries only and

specifically prohibited Arthur Andersen from making site inspections.

In contrast, the U.S. District Court for the Eastern District of Louisiana found that the franchisor had acted in good faith and in the normal course of business in making its offer to sell the premises to the dealer in *Roshan Associates, Inc. v. Motiva Enterprises, L.L.C.*, 241 F. Supp. 2d 639, Bus. Franchise Guide (CCH) ¶ 12,424 (E.D. La. 2002). The franchisor had decided to sell the gas station premises. As the PMPA requires, the franchisor made a bona fide offer to sell the premises to the dealer. The dealer's refusal of the offer entitled the franchisor to refuse to renew the franchise, the court ruled.

The court in *NSY, Inc. v. Sunoco, Inc.*, Bus. Franchise Guide (CCH) ¶ 12,412 (E.D. Pa. 2002) denied the franchisee's request for a preliminary injunction to prevent non-renewal. The court concluded that the franchisee could not demonstrate likelihood of success on the merits where its records reflected deliberate concealment of a fuel leak and

**A former franchisee
obtained a preliminary injunction
under the PMPA prohibiting Exxon
Mobil Corporation from interfering
with its business operations.**

underreporting of royalties.

In *JET Inc. v. Shell Oil Co.* (also discussed under “State Franchise Relationship Statutes”), the U.S. District Court for the Northern District of Illinois rejected a request by a group of gasoline dealers that the court recognize a cause of action for constructive termination under the PMPA. Bus. Franchise Guide (CCH) ¶ 12,461 (N.D. Ill. 2002). The dealers had signed renewal franchise agreements, but claimed that the changes and additions that Shell placed in the renewal agreements were not made in good faith or the normal course of business, but were offered for the purpose of preventing them from renewing their franchises. The renewal agreements differed substantially from previous ones, according to the dealers. The agreements allegedly contained unlawful waivers, forfeitures, limitations of liability, and reductions of the applicable statute of limitations governing claims against Shell. They also contained allegedly unconscionable penalties in the form of liquidated damages, commercially unreasonable rent increases, excessive transfer and maintenance fees, discriminatory pricing mechanisms, and an increase in dealer tank wagon prices. The dealers also claimed that Shell attempted unreasonably to restrain their ability to sell their interest in the franchises through a provision giving a Shell affiliate the right to withhold consent of any proposed sale.

To maintain a cause of action under the statute, the court held, a franchisee must show that he or she has been terminated or not renewed. Under the PMPA, the court observed, a franchisor that is unwilling to renew must notify the franchisee of nonrenewal ninety days before the nonrenewal is to take effect. During this ninety-day period, the franchisee can seek a preliminary injunction to prevent nonrenewal while continuing to operate on the terms of the previous agreement until the merits of its action against the franchisor are resolved. The court reasoned that because a franchisee can obtain injunctive relief to ensure that it need not go out of business before seeking relief from improper nonrenewal, this was the only remedy that Congress intended to protect franchisees against threats of nonrenewal. Thus, the court concluded, the PMPA authorizes no cause of action for constructive termination after a franchisee has already signed a renewal agreement, even under threat of nonrenewal.

Release

Two recent federal court decisions recognized the validity of releases and granted summary judgment based on those releases. *Sportique Motors, Ltd v. Jaguar Cars, Inc.*, Bus. Franchise Guide (CCH) ¶ 12,387 (E.D.N.Y. 2002) and *Lee v. GNC Franchising Inc.*, Bus. Franchise Guide (CCH) ¶ 12,428 (C.D. Cal. 2002). Plaintiffs in *Sportique Motors* sued Jaguar Cars, Inc., for allegedly insufficient warranty work reimbursements pursuant to New York’s Motor Vehicle Dealer Law. Jaguar moved for summary judgment based on a release executed by Sportique in connection with the sale of its dealership. Sportique claimed that the release was unenforceable due to duress and because it violated the Motor Vehicle Dealer Law’s anti-waiver provision, which prohibits a franchisor from requiring a dealer to execute a release that would relieve the franchisor of

liability under the Act. Jaguar had insisted on the release in connection with Sportique’s sale of its dealership and Sportique executed the release under protest, believing it unenforceable. The court concluded that the release did not violate the Motor Vehicle Dealer Law provision because it was not “required” as contemplated by the statute. The parties agreed to execute a mutual release upon Sportique’s sale of its assets when they signed the dealer agreement. Sportique could have redrafted the release at the time of the sale to except the claims that Sportique believed it had under the Motor Vehicle Dealer Law, but the dealer failed to do so.

Similarly, the U.S. District Court for the Central District of California upheld a release in *Lee*. California franchisee Lee executed a broad general release in connection with the renewal of his two franchise agreements in 1999 and 2002. Lee sought to escape the effect of those releases, claiming fraud, duress, and violation of California public policy. Applying Pennsylvania law to the fraud and duress claims pursuant to the franchise agreements’ choice-of-law provisions, the court found no evidence that promises were made with the intent not to keep them as required for fraud. Nor did Lee tender back the consideration for the release as required to sustain a fraud claim. Lee’s California public policy arguments were unavailing because the release requirement was not “beyond the reasonable expectations of the party charged” and did not cause “an unexpected allocation of the risks between the parties.” The release requirement was set forth in the original franchise agreement and was a reasonable requirement for continuation of the franchise relationship into a new term. There was no economic duress because there was no threat of physical harm as required under Pennsylvania law. The only claim not barred by release was the franchisee’s California Franchise Investment Law claim, which the court rejected, as described below.

State Franchise Registration/Disclosure Statutes

The *Lee* court also held that the franchisees’ claims based on alleged misrepresentations and omissions in the UFOC given them before signing a franchise agreement in 1990 were barred by the four-year statute of limitations under the California Franchise Investment Act. But the court permitted the franchisees to bring claims alleging misrepresentations and omissions in the UFOC given them before they signed a renewal franchise agreement in 1999, holding that they could have reasonably relied on the disclosures in the 1999 UFOC even though they had been franchisees since 1990. *Lee v. General Nutrition Co.*, Bus. Franchise Guide (CCH) ¶ 12,411 (C.D. Cal. 2001).

In *William F. Healy v. Carlson Travel Network Associates, Inc.* (also discussed under “Choice of Law”), a Minnesota federal court, ruling on cross-motions for partial summary judgment, rejected the franchisee’s claims under the Illinois Franchise Disclosure Act. 227 F. Supp. 2d 1080, Bus. Franchise Guide (CCH) ¶ 12,443 (D. Minn. 2002). The franchisee claimed that a Carlson representative told him that the average start-up Carlson Travel franchisee makes “\$1.2 million a year, and that you can add a million for each year for the next

three years,' ” and “that the average Carlson franchise does \$3.8 million per year in sales.” The court found the franchisee’s claim of fraud based on these representations insufficient as a matter of law to state a claim for misrepresentation under the Illinois Franchise Disclosure Act. The franchisee’s complaint did not allege that the figures were false, and he admitted in deposition that he did not know whether they were true. Representations of expected earnings were not actionable under the Illinois Franchise Disclosure Act because they are not representations of present material fact, the court held. In addition, the court noted that the franchisee had signed a franchise closing checklist specifically disclaiming that he had been given or relied on “any oral or written promises, representations or assurances of any specific actual, projected or pro forma sales, profits, earnings or break even point” for his or any Carlson franchise.

The franchisee also claimed that Carlson committed fraud under the Illinois Franchise Disclosure Act by misrepresenting the services that would be provided to him. Representations of future events cannot generally constitute fraud under Illinois law, the court observed, but there is an exception for promises of future conduct where the promises are made in bad faith with the intent to deceive. Although there were intermittent problems with some of the promised Carlson services, the franchisee did not allege that Carlson intentionally caused the failures, and offered no evidence that the Carlson representative making the statements knew or could have foreseen that his representations about these services would prove to be inaccurate. Thus, there was no proof of a scheme to defraud, and the statements could not constitute fraud under the Illinois Franchise Disclosure Act, the court concluded.

State Franchise Relationship Statutes

The U.S. District Court for the Northern District of Illinois denied summary judgment to a small engine manufacturer that claimed that the notice of termination that it sent the franchisee barred suit under the Illinois Franchise Disclosure Act’s ninety-day statute of limitations, which applies when a franchisor has violated the Act and gives the franchisee written notice disclosing the violation. *H.R.R. Zimmerman Co. v. Tecumseh Products Co.*, Bus. Franchise Guide (CCH) ¶ 12,445 (N.D. Ill. 2001). The franchisee argued that the termination letter never mentioned the Act, let alone admitted liability under it, and that the manufacturer expressly asserted in the letter that it had the contractual right to terminate without cause. Therefore, according to the franchisee, the letter did not disclose the violation; rather, the letter itself *was* the violation. The court ruled that there was a material issue of fact whether the notice disclosed the violation and therefore denied summary judgment.

In a later opinion in the same case, the court refused to per-

mit the manufacturer to amend its pleadings to claim that it had good cause for the termination, holding that facts learned after a termination notice is sent cannot constitute good cause for termination under the Act. Bus. Franchise Guide (CCH) ¶ 12,446 (N.D. Ill. 2002). The manufacturer admittedly did not learn of the franchisee’s alleged misrepresentations, its proposed good cause for termination, until after it had terminated the agreement. Since its initial termination was essentially a business decision, the manufacturer provided no good cause under the Act, the court ruled. However, the manufacturer was permitted to amend its pleadings to limit any damages to sales within the State of Illinois. The proposed amendment would state a claim for restricting the scope of damages under the Act to sales occurring within the state, the court reasoned, because the Act is silent about whether damages incurred by Illinois franchisees from lost sales outside of Illinois are recoverable, and the Illinois Supreme Court has held that when a statute is silent on its extraterritorial effect, there is a presumption that it has none.

The Seventh Circuit ruled that a trucker who delivered milk from farmers to the production facilities of a dairy cooperative was not a “dealer” entitled to the protections of the Wisconsin Fair Dealership Law when the cooperative terminated his contract. *Van Groll v. Land O’Lakes, Inc.*, 310 F.3d 556, Bus. Franchise Guide (CCH) ¶ 12,450 (7th Cir. 2002).

The court found that the trucker made little investment in the product and brand that he hauled. Land O’ Lakes never required him to buy his truck, although he did so. The trucker also pointed

to a noncompete clause in the contract and the fact that he received a manual as indicia that he was a dealer, but the court disagreed. The noncompete clause applied only to the member farmers whom the trucker served, and he was free to deliver milk to or from anyone else. Thus, the court found, his relationship with Land O’ Lakes did not preclude his finding work after the termination. Also, much of the manual consisted simply of applicable federal and state regulations. Land O’ Lakes exercised little control over the trucker other than requiring him to wear a clean uniform and to keep the milk clean while dropping it off at the Land O’ Lakes facility. The trucker’s use of the trademark was not sufficient to make him a “dealer” either, the court ruled, because he did not make a substantial investment in the trademark; Land O’ Lakes paid all of the costs of putting a logo on his truck, and Land O’ Lakes provided his uniform.

In a somewhat curious opinion, the U.S. District Court for the Northern District of Illinois refused to grant a temporary restraining order against an allegedly wrongful termination under the Illinois Franchise Disclosure Act in *Fasti USA v. Fasti Farrag & Stipsits GmbH*, Bus. Franchise Guide (CCH)

The Seventh Circuit ruled that a trucker who delivered milk from farmers to the production facilities was not a “dealer” entitled to the protections of the Wisconsin Fair Dealership Law.

¶ 12,464 (N.D. Ill. 2002). The North American distributor for an Austrian equipment manufacturer alleged that the manufacturer was terminating its distributorship without good cause, but the court found no evidence that the manufacturer had terminated the distributorship at all.

In *JET Inc. v. Shell Oil Co.*, discussed at greater length under the heading “PMPA,” the U.S. District Court for the Northern District of Illinois dismissed two claims by a group of gasoline dealers under the Illinois Franchise Disclosure Act. Bus. Franchise Guide (CCH) ¶ 12,461 (N.D. Ill. 2002). A claim that Shell engaged in fraudulent practices in connection with the offer or sale of a franchise failed because it was not pleaded with sufficient particularity. The court dismissed a claim that Shell committed unlawful discrimination in violation of the Act by allegedly charging different prices to different dealers within the plaintiff dealers’ geographic marketing area because there had not been a sufficient showing that the dealership was a “franchise” under the Act.

See the discussion of the applicability of the Connecticut Franchise Act in *Diesel Injection Service Co., v. Jacobs Vehicle Equipment Co.*, Bus. Franchise Guide (CCH) ¶ 12,388 (Conn. Super. 2002) (unpublished opinion).

Trademark Infringement

The U.S. District Court for the Northern District of Texas issued a preliminary injunction in favor of Pizza Hut in a typical post-termination trademark infringement case in *Pizza Hut, Inc. v. White*, Bus. Franchise Guide (CCH) ¶ 12,437 (N.D. Tex. 2002). Notably, the court placed significance on Pizza Hut’s showing that it had rightfully terminated the franchise agreement based on the defendant franchisee’s failure to pay amounts due under the agreement. The court found the former franchisee’s use of the Pizza Hut marks to be unauthorized and concluded that this use would create a likelihood of confusion between Pizza Hut’s franchisees and defendant’s product. In a less typical case, the U.S. District Court for the Middle District of Florida granted Howard Johnson International, Inc.’s (HJI) motion for preliminary injunction against a former franchisee’s operation of a formerly franchised hotel under the name “Howard’s Resort Hotel.” *Howard Johnson International, Inc. v. Craven Properties Ltd.*, Bus. Franchise Guide (CCH) ¶ 12,386 (M.D. Fla. 2002). The similarity between “Howard Johnson” and “Howard’s” was not limited to the intrinsic similarities of the common name “Howard.” The lettering, background, and decoration on both the new “Howard” sign and the former “Howard Johnson” sign were also very similar. There was a likelihood of confusion and an apparent intent on the part of the former franchisee to pass his facility off as an authorized Howard Johnson facility. HJI had received at least a dozen complaints from customers of the Howard’s hotel, demon-

strating actual confusion among consumers about its ownership.

The Ninth Circuit upheld summary judgment against a trademark owner on a claim of abandonment in *Barcamerica International USA Trust v. Tyfield Importers Inc.*, Bus. Franchise Guide (CCH) ¶ 12,451 (9th Cir. 2002). Barcamerica International USA Trust had registered the trademark “Leonardo Da Vinci” with the U.S. Patent and Trademark Office (PTO) in the early 1980s for use on wine. In 1988, Barcamerica entered a licensing agreement with Renaissance Vineyards pursuant to which Barcamerica granted Renaissance the nonexclusive right to use the “Da Vinci” mark. The agreement contained no quality control provisions. Cantine Leonardo Da Vince Soc. Coop. a.r.l. (Cantine) had sold wine bearing the “Leonardo Da Vinci” tradename since 1972 and began selling its wine in the United States in 1979. Cantine learned of Barcamerica’s registration of the same mark in 1996 and commenced a cancellation proceeding in 1997. Barcamerica sued Cantine to enjoin its use of the “Leonardo Da Vinci” mark and to enjoin the PTO proceeding. The trial court granted Cantine’s motion for summary judgment on the basis of Barcamerica’s abandonment of the mark through naked licensing. The

appellate court affirmed because Barcamerica’s license with Renaissance did not contain any quality control mechanisms or any restrictions on the quality of goods bearing the “Da Vinci” mark. Although the court noted that “the lack of an express contract right to inspect and supervise a licensee’s

operation is not conclusive evidence of lack of control,” there was no evidence that Barcamerica was familiar with or relied upon Renaissance’s efforts to control the quality of the products offered under its trade name. The only evidence of “control” was Barcamerica’s random tastings of the wine sold and its reliance on the reputation of Renaissance. Barcamerica, however, did not have a close working relationship with Renaissance and could not demonstrate any knowledge of or reliance on actual quality controls used by Renaissance. Under these circumstances, the court concluded, “[b]oth the terms of the licensing agreements and the manner in which they were carried out” demonstrated that Barcamerica had engaged in naked licensing and was thus estopped from asserting any rights in the mark.

In *Shell Trademark Management BV v. Canadian American Oil Co.*, Bus. Franchise Guide (CCH) ¶ 12,396 (N.D. Cal. 2002), Shell Trademark Management BV (Shell) used a theory of “dilution by blurring” to persuade a California federal court that it was entitled to some protection against a dealer’s promotion of its own Touchless brand of gasoline in close proximity to the Shell brand at the dealer’s station, but then rejected the relief that it received. Defendant was a Shell franchisee that also sold its own Touchless brand of gas. The

A federal district court issued a preliminary injunction in favor of Pizza Hut in a typical post-termination trademark infringement case in *Pizza Hut, Inc. v. White*.

Shell and Touchless marks were displayed on the same sign, although the pumps offering the two types of gas were separate. The court rejected Shell's trademark infringement theories, finding that the marks were too dissimilar to create a likelihood of confusion. Also, Shell was not likely to succeed on an "initial interest confusion" theory, because consumers could actually buy Shell gas at the station. Moreover, consumers could be attracted to the station by the Touchless sign, rather than the Shell mark. The court was convinced, however, that defendant might be trading on Shell's goodwill by displaying the Shell marks in such close proximity to the Touchless gas and thus found that Shell had demonstrated "a serious question" on its claim for dilution by blurring. The court was unwilling to enjoin the dealer from selling Touchless gas at its station. However, Shell refused the more limited injunction offered by the court, which would have restricted

the manner in which the dealer promoted the competing gasolines.

Endnote

1. There is an older federal case holding that a franchisor's failure to register its franchise as required by the New York Franchise Sales Act made a franchise agreement void and unenforceable. *King Computer, Inc. v. Beeper Plus, Inc.*, Bus. Franchise Guide (CCH) ¶ 10,182 (S.D.N.Y. 1993). The *King Computer* ruling was later repudiated by a New York state court in *TKO Fleet Enterprises, Inc. v. Elite Limousine Plus, Inc.*, Bus. Franchise Guide (CCH) ¶ 11,855 (N.Y. Sup. 2000), which held that nonregistration did not make a franchise agreement null or unenforceable because the New York Franchise Sales Act did not provide that remedy. In 1999, an Iowa federal court also expressly declined to follow the *King Computer* reasoning and refused to declare a franchise agreement void where the franchisor had failed to register the franchise under the Illinois Franchise Disclosure Act. *Moseley's & Co. v. Maxim Group, Inc.*, Bus. Franchise Guide (CCH) ¶ 11,664 (D. Iowa 1999).