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Recent Articles

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Lots of Meat Left on the Bone for Franchisees & Franchisee Lawyers
By: Jeffrey M. Goldstein*

During my preparation of an analysis of a very recent New Jersey federal court decision involving a gasoline franchise dispute (South Gas v. ExxonMobil, 2016), I was sidetracked by a fourteen year-old franchise decision by the same court – Beilowitz v. General Motors Corp., 233 F. Supp.2d 631 (D.N.J. 2002). Although the Beilowtizcase always held an honored place in my semi-consciousness, these conjured thoughts were limited only to non-specific good feelings about a franchisee's ability to demonstrate irreparable harm in a preliminary injunction context. After going back and re-reading the Beilowitz case, it is clear that the case is much more; indeed, for franchisees Beilowitz is a Meisterstuck.

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WRONGFUL FRANCHISE TERMINATIONS

Every franchisee or dealer, at one point or another, considers the consequences of a termination by his or her franchisor, supplier or manufacturer. Many times this dire situation does not actually arise; however, too many other times it does. A wrongful termination has the potential to destroy not only your entire franchise or distribution business, but also all of your personal financial resources - even those wholly unrelated to the franchise or dealership business. A personal guarantee is almost always included - in an attachment or the fine-print - in every franchise and distribution agreement.

Many franchisees simply wait too long before calling a franchise attorney in the face of a threatened termination. Quick action by an experienced franchise lawyer is absolutely crucial in the face of a threatened franchise termination, as courts will almost always refuse to 'undo' a franchise or dealer termination that has already been effectuated - even if the termination is itself wrongful or unreasonable. Courts are not willing to try to unscramble an already scrambled-franchise termination.

- See more at: http://www.goldlawgroup.com/wrongful-franchise-terminations/#sthash.pXiwArSw.dpuf

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Recent Blogs

Franchisors, Dirty Hands and Equity

Owners of trademarks understandably sue licensees when licensees continue to use the owners' trademarks after owners have retracted their authorization to use them. The form of relief sought by a trademark owner in this circumstance is a preliminary injunction enjoining the defendant from continuing to operate its business using the trademarks. In the franchise context, this frequently occurs following a franchisor's termination of a franchisee, when the franchisee continues to hold itself out to the public as a franchisee using the franchisor's trademarks believing that it is justified in doing so because it was wrongfully terminated.

When franchisees defend a post-termination preliminary injunction request, they many times assert a defense of "unclean hands." This defense arises out of the old equitable legal maxim that "he who seeks equity must do equity." In these cases the franchisee argues that the franchisor is not entitled to preliminary injunctive relief because the franchisor itself has unclean hands in its having acted inequitably during the tenure of the franchise relationship. Courts, however, have been unreceptive, and more accurately hostile, to franchisees' attempts to use the defense.

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Insurance Entrepreneurs Wanted for Franchise Industry in Face of Joint Employer Risk

http://www.insurancejournal.com/magazines/coverstory/2016/01/11/394052.htm

Okay; maybe I'm missing something. The underlying purpose of insurance is to assess and manage risk. And, altho insurance companies many times prefer to establish insurance programs for situations in which there is there is little to no risk, creative, aggressive and successful underwriters are capable of building profitable programs in the face of tangible

heightened risk...

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Peepholes, Terrorists, Legionnaires' disease and Franchisor Liability for Injuries

The deadly terrorist attack in Pakistan on the Marriott Islamabad Hotel in 2008; the filming of Erin Andrews in her hotel room through a peephole at the Nashville Marriott in 2008; the alleged contraction of Legionnaires' Disease from the whirlpool tub and swimming pool at the Sheraton Hotel North Charleston in 2009. How are these dreadful events related? They are connected by similar lawsuits in which injured hotel guests sought, unsuccessfully, to impose damages liability on the franchisors.

Potential liability for injuries arising from the operations of a franchisee may attach to a franchisor under several legal theories. Generally, in a hotel context, a franchisor's accountability is based upon either direct liability - the franchisor's, or its own immediate employees', negligent conduct; or vicarious liability - the negligence of its franchisee and its employees.

How these theories will be applied to a franchisor in any given set of circumstances will depend, in part, upon the "vertical relationship" between the franchisor and the injured customer. In this regard, a hotel may be:

- owned and operated by the franchisor directly;
- owned by the franchisor, but managed by another party; or
- owned by independent business who holds a brand-franchise license.

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