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BLOGS

Application of Franchise and Dealer Protection Laws

Beverage Distributorship Not a "Franchise" Under Connecticut Act

In *B & E Juices, Inc. v. Energy Brands, Inc.*, Bus. Fran. Guide ¶13,748 (D. Conn. Oct. 26, 2007), a federal district court in Connecticut found that a beverage distributor was not a "franchisee" for purposes of the Connecticut Franchise Act. The plaintiff beverage distributor sought a preliminary injunction restraining the defendant manufacturer from terminating a distribution agreement between the parties. B & E asserted that it had a franchise relationship with Energy Brands and that under the Connecticut Franchise Act, a franchisor may only terminate a franchise for good cause. B & E argued that Energy Brands improperly terminated the distribution agreement after Energy Brands was acquired by another beverage manufacturer that sought to use its own extensive network of distributors to distribute the Energy Brands products.

In determining whether B & E was a franchisee under the Connecticut Franchise Act, the court applied a multi-factor test established to determine Energy Brands' level of control over B & E's marketing plan. The court found that Energy Brands did not control many of the aspects of B & E's marketing, including the hours and days of operation; Energy Brands did not require B & E employees to wear any particular uniform; Energy Brands was not involved in the hiring or firing of B & E employees; and there was no evidence the Energy Brands required any training of B & E employees. In addition, the court held that while Energy Brands controlled some of the pricing of its product to customers, there was a significant portion that it did not control. Further, among other things, the court held that a majority of B & E's trucks did not carry advertising for Energy Brands' products, that B & E was never required to provide the company with financial reports, and that Energy Brands' employees did not dictate how B & E must run its business. After weighing the facts, the court found that B & E did not engage in the offering, selling, or distributing of goods under a marketing plan prescribed in substantial part by Energy Brands.

Additionally, the court found that B & E's business was not "substantially associated" with Energy Brands' trademarks, trade names, or advertising. Despite the fact that Energy Brands products constituted 40% of B & E's business, the majority of B & E's business was derived from distributing Snapple products. The majority of B & E's trucks bore Snapple advertising and the majority of B & E's coolers were Snapple coolers. In fact, because of B & E's distribution agreement with Snapple, B & E could not distribute one of Energy Brands' products that competed with Snapple. As a result, the court determined that B & E was not completely dependent upon the public's confidence in the "franchised" product for most or all of its business.