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## BLOGS

### Terminations

# California Court Upholds Immediate Termination of Franchise for Sale of Unapproved Products

A California federal court this month granted a franchisor's motion for summary judgment and upheld the termination of a franchise due to the sale of unapproved products. *Baskin-Robbins Franchising LLC v. Mihranian*, No. 2:08-cv-07022 (C.D. Cal. Jan. 5, 2010). Gray Plant Mooty represents the franchisor in this case. Baskin-Robbins had terminated the franchisees without opportunity to cure immediately after finding in October 2008 that they were selling frozen yogurt at their store, a product specifically prohibited for sale by the franchisor after April 2008. Despite being explicitly told to remove their yogurt machines, the franchisees continued to sell frozen yogurt. The defendants used a fictitious entity and purchased yogurt through that entity from a Baskin-Robbins supplier approved to sell only napkins and cups. Shortly after receiving the termination notice, the franchisees' attorney wrote to Baskin-Robbins and admitted the franchisees' defaults.

During the case, the franchisees admitted they were selling yogurt in October 2008, but denied that it was purchased from an unapproved supplier. In opposing summary judgment, the only explanation offered by defendants was that they had purchased the yogurt – 250 gallons of it – for personal consumption. The court found that this was not credible and that there was no issue that the franchisees continued to sell yogurt at their store after being told to remove the yogurt machines in April 2008. In granting Baskin-Robbins' summary judgment motion, the court relied in part on the letter from defendants' attorney, rejecting the argument that it was inadmissible as an offer to compromise because no such offer had been made. The court found that the breach could not be cured under California law because the franchisees' conduct was injurious to the franchisor's goodwill. Lastly, the court also granted attorney's fees to the franchisor.