

A solid yellow right-angled triangle pointing towards the top-left corner.

BLOGS

Definition of a Franchise

California Franchise Law Held Not Applicable to Distribution Arrangement

In *Gabana Gulf Distrib. v. Gap Int'l Sales Inc.*, 2007 WL 4145105 (N.D. Cal. Jan. 9, 2008), a federal district court in California confronted the issue of what constitutes a franchise, finding that an International Sales Program Distributor License Agreement ("ISP Agreement") between distributors and defendants Gap International Sales, The Gap, Banana Republic, and Old Navy (collectively "GAP") was not subject to the California Franchise Relations Act because the distributors' operation was not substantially associated with GAP's trademarks or other commercial symbols.

The distributors had brought a breach of contract claim against GAP alleging violation of the CFRA. The parties each filed for summary judgment regarding the issue of whether their relationship, as described in the ISP Agreement, constituted a franchise under the California franchise statute. The court held that the parties' relationship was not a franchise because the distributors' business was not substantially associated with GAP's trademarks or other commercial symbols (the second element of the franchise definition). It found that GAP's ISP Agreement with the distributors specifically prevented them from using GAP's trademarks, and the court held that simply because the manufactured items of clothing that the distributors sold had GAP's marks on them did not convey a broader right of use to the distributors. In addition, the court refused to consider the distributors' use of reporting forms containing GAP's logos as evidence of substantial association with GAP's trademarks, because the distributors' use of the forms with the public contravened the terms of the ISP Agreement.

The court did find there to be a triable issue regarding whether GAP breached the covenant of good faith and fair dealing by terminating the ISP Agreement with the distributor without cause, so the court denied GAP's motion for summary judgment on that point.