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BLOGS

Fraud/Misrepresentation

Citing Disclaimers, Vermont Federal Court Grants Motion to Dismiss Fraudulent Inducement Claims

A Vermont federal court recently granted, in part, a Ben & Jerry's motion to dismiss the plaintiffs' complaint regarding allegations of fraudulent inducement, fraudulent nondisclosure, fraud, estoppel, and negligent misrepresentation pertaining to the information set forth in Item 19 of the Ben & Jerry's Uniform Franchise Offering Circular. *Sherman v. Ben & Jerry's Franchising, Inc.*, 2009 WL 2462539 (D. Vt. Aug. 10, 2009). The plaintiffs are former Ben & Jerry's franchisees who owned and operated a shop in Blacksburg, Virginia. The plaintiffs brought suit against Ben & Jerry's alleging, among other things, that the information contained in Item 19 of the Ben & Jerry's UFOC was false and misleading, and that it improperly induced them into entering into a franchise relationship. Gray Plant Mooty represents the franchisor in this case.

In partially granting the Ben & Jerry's motion to dismiss, the court found the UFOC and franchise agreement contained specific disclaimers that there were no guarantees of success or profits and that the plaintiffs acknowledged that no such representations had been made. The court also found that the plaintiffs represented to Ben & Jerry's in signing the franchise agreement that they conducted an independent investigation of the business of running a shop. The court concluded that such disclaimers and acknowledgements precluded the plaintiffs from claiming justifiable reliance on the information contained in Item 19 of the UFOC. Accordingly, the court found that the plaintiffs could not claim that they were defrauded into signing the franchise agreement.

The court denied the motion to dismiss certain other claims, including that Ben & Jerry's allegedly failed to expend advertising monies properly and failed to provide adequate marketing and training support, finding that these issues were to be determined on summary judgment or by the trier of fact.