

**BLOGS**

Fraud/Misrepresentation

## Colorado Court Vacates Dismissal of Franchisees' Claims of Fraudulent Nondisclosure

A Colorado appellate court recently vacated (with a remand for further proceedings) the trial court's dismissal of claims against a franchisor and its parent, two officers, and its lawyers, alleging fraudulent nondisclosure of the parent's material financial losses each year since its inception in 1990. The case is *Colorado Coffee Bean, LLC v. Peaberry Coffee, Inc.*, 2010 LEXIS 210 (Col. App. Feb. 18, 2010). The appellate court found that the trial court erred in finding the franchisees' reliance on the nondisclosure of the parent's losses was unreasonable. The appellate court analyzed the specific wording of each of the exculpatory clauses in the document and found that they only addressed nonreliance on *affirmative* representations made outside of the transactional documents, but did not address the failure to disclose material information. The appellate court pointed out that none of the exculpatory clauses referred to information about the parent's financial condition or negated reasonable inferences that could be drawn about this information.

The appellate court also concluded that while the FTC's Franchise Rule permits disclosure of a parent's financial statements only if the parent serves as a guarantor of the franchisor's obligations, the Franchise Rule does not preempt common law. The appellate court found that the Franchise Rule dealt only with "financial statements" and did not preclude a general comment, somewhere in the FDD, regarding the negative financial condition of the parent, such as, "The franchisor is the wholly owned subsidiary of \_\_\_\_, which has not shown a profit during its \_\_ years of operation."