Lathrop GPM

BLOGS
Noncompetes

Colorado Federal Court Refuses Preliminary Injunction to Enforce In-Term Noncompete

In *Big O Tires, LLC v. Felix Bros. Inc.*, 2010 U.S. Dist. LEXIS 81559 (D. Colo. Jul. 12, 2010), a franchisee group owned and operated three Big O Tires franchises in California. The franchisee elected not to renew the franchise agreement for one of the units, and requested early termination of the remaining two units. That request was declined, and the franchisee continued to operate its remaining two franchises. The franchisee also continued to operate its first tire store, changing the name to "Budget Tires and Automotive."

The franchisor sought a preliminary injunction to prevent the franchisee from operating the competing business. The franchisor, however, did not attempt to enforce a post-termination noncompete contained in the expired franchise agreement (which, under the franchise agreement, would have required a "good cause" termination), but rather sought to enforce the *in-term* noncompete clauses in the remaining Big O franchise agreements. These clauses prohibited the franchisee from operating any competing tire or automotive business other than a Big O franchised unit.

Finding that the franchisor had failed to show irreparable harm, a Colorado federal court denied the franchisor's motion. Although the franchisor argued that the franchisee could use confidential information learned as a Big O franchisee in the operation of its competitive business and might refer customers to the competitive business, the court found that the franchisor failed to present any direct, admissible evidence that the franchisee was actually engaged in such activity. Having found against the franchisor on this element, the court declined to consider likelihood of success on the merits or the other injunction factors, and denied the motion.