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## BLOGS

State Franchise and Dealer Laws

# Court Concludes That Remedies Under Maine's Unfair Trade Practices Act Do Not Apply to Relationships Governed by Franchise Act

In a case that could apply to all types of franchises, a former machinery distributor's claims under the Maine Unfair Trade Practices Act (MUTPA) were dismissed last month in *The Oliver Stores v. JCB, Inc.*, Bus. Franchise Guide (CCH) ¶ 14,913 (D. Maine Oct. 5, 2012). Defendant JCB brought a motion to dismiss the MUTPA claim on the grounds that the remedies of attorney's fees and other relief under the MUTPA are not available when the parties had a commercial relationship such as a franchise or distributorship. In 1993, Maine's legislature had amended the Maine Franchise Act to include a "penalty" provision stating that a violation of the MFA also constituted a violation of the MUTPA. The MUTPA, however, allows for private remedies only in consumer transactions where the purchase is "primarily for personal, family or household purposes." When distributor The Oliver Stores brought both MFA and MUTPA claims, the Maine federal court was tasked with reconciling the MFA penalty provisions and MFA reference to the MUTPA with the precedent holding that MUTPA remedies do not apply in commercial transactions. In this case the relationship was a distributorship, but the same rationale would appear to apply in a traditional business format franchise situation, as well.

After analyzing legislative history and construing the language used in both statutes, the court found that any interpretation that would make MUTPA's private remedies section applicable to franchises would render meaningless the words "primarily for personal, family or household purposes" within MUTPA. The plaintiff's proposed construction of the statutes also would make the MFA's own civil remedies section superfluous, the court reasoned. Thus, the court concluded that the plaintiff had no private right of action against JCB through the MFA or otherwise for the extra remedies set forth in the MUTPA.

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