BLOGS

Post-Termination Injunctions: Noncompetes

Court Denies Franchisees' Motion to Dismiss Claim of Breach Based on Underpayment of Royalties and Noncompete Violation

In *Novus Franchising, Inc. v. Livengood*, 2012 U.S. Dist. LEXIS 2610 (D. Minn. Jan. 8, 2012), a Minnesota federal court denied the franchisees' motion to dismiss Novus' claim for breach of contract based on the franchisees' continued operation of their business during the post-term noncompete period, failure to pay required fees and royalties, underreporting of revenues, and failure to submit accurate financial information. The dispute arose when Novus learned that the franchisees had underpaid their royalties by roughly $10,000 through the end of the franchise term. After the franchise agreement expired, Novus learned that the franchisees continued to operate their business within their designated area. Novus filed suit to collect amounts owed under the franchise agreement and enforce the franchisees' covenant against competition.

The franchisees moved to dismiss the complaint on the grounds that Novus failed to comply with the franchise agreement's alternative dispute resolution clause and failed to state a claim for relief because the noncompete provision was unenforceable under Kansas law. The court denied the motion to dismiss in its entirety. The franchisees argued that the franchise agreement required Novus to engage in good faith negotiations with them before commencing any legal action. The court determined that resolution of this claim was inappropriate on a motion to dismiss because the parties presented conflicting facts about Novus' efforts to contact the franchisees before filing suit. The franchisees also argued that Kansas courts typically void covenants not to compete to the extent that they restrain a person's ability to exercise his trade or calling. The court concluded that it could not determine the enforceability of the covenant not to compete at this stage of the litigation because issues of fact remained concerning its purpose, its effect on the franchisees and the public interest, and the reasonableness of its geographic and temporal restrictions.