

## Court Enforces Restrictive Covenant

A Florida federal court recently enjoined franchisor Panda Express from opening a restaurant adjoining a Chick-Fil-A restaurant location in Mount Dora, Florida. *Chick-Fil-A, Inc. v. CFT Development, LLC*, 2009 WL 2870617 (M.D. Fla. Sept. 3, 2009). When Panda Express acquired its property in 2007, it was aware that Chick-Fil-A enjoyed the benefit of a restrictive covenant prohibiting the property from being used as the site of “a quick service restaurant deriving twenty-five percent (25%) or more of its gross sales from the sale of chicken.” Panda Express resisted the enforcement of this covenant on the grounds that: (1) its stores are not “quick service restaurants;” (2) the covenant was unenforceable due to vagueness and uncertainty; (3) a typical Panda Express restaurant does not derive 25% or more of its gross sales from the sale of chicken; and (4) Chick-Fil-A had waived and/or should be estopped from enforcing the covenant.

The court rejected Panda Express’ argument that its restaurants are part of the “fast casual” segment rather than “quick service restaurants,” noting that at the time of the events involved in this case, both parties were in the business of operating “quick service restaurants” as that term is understood. The court also found that the restrictive covenant was unambiguous as applied to the facts of this case and that by any reasonable measure, a typical Panda Express restaurant derives 25% or more of its gross sales from the sale of chicken. Although Chick-Fil-A had not enforced similar covenants against Panda Express in other locations, the court held that Chick-Fil-A had not waived its rights at this location and was not estopped from enforcing the restrictive covenant. Accordingly, the court awarded Chick-Fil-A a permanent injunction enjoining Panda Express from operating one of its restaurants on the property.