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BLOGS

Trademarks

Court Enjoins Former Franchisee's Continued Use of Franchisor's Trademarks and Associated Telephone Number

In *Molly Maid v. Carlson*, 2008 WL 2620109 (E.D. Mich. July 1, 2008), the United States District Court for the Eastern District of Michigan recently granted Molly Maid's motion for preliminary injunction to restrain its former franchisee from infringing on Molly Maid's trademarks. This decision provides good support to franchisors who wish to avoid customer confusion when a former franchisee, in operating a competing business, continues to use a telephone number that had been associated with the terminated franchise.

In granting the franchisor's motion, the court first noted that where a former franchisee continues to use a franchisor's trademarks, the franchisor's burden to demonstrate that the infringement is likely to confuse consumers is significantly lessened. The court then found a likelihood of confusion in this case because the Molly Maid name continued to be associated with the telephone number in phone listings. That led customers who called the former franchisee's Molly Maid phone number to reach the former franchisee's new business (called "Mega Maids"), which offered the same services as a Molly Maid business. The court cited evidence showing that the former franchisee attempted to secure business from consumers who called the telephone number in search of a Molly Maid business.

The court rejected the former franchisee's defenses that: (1) the parties had agreed to allow Mega Maids to continue using the telephone number after the Franchise Agreement expired; and (2) the telephone company, not Mega Maids, was the party at fault for the continued association between Molly Maid and the phone listing. In that regard, the court found that an enforceable modification of the franchise agreement allowing Mega Maids to retain use of the phone number would have required Molly Maid to receive some consideration in return, which was not the case here. The court further found that Mega Maids did very little to effectuate the required disassociation of the telephone number from Molly Maid and its trademarks, and that it actually benefited from this continued association. Finding that the franchisor would be irreparably harmed in the absence of injunctive relief, the court enjoined the franchisee from using Molly Maid's trademarks and ordered the telephone number of the former Molly Maid franchise transferred immediately to Molly Maid.