

**BLOGS**

Trademarks

Court Enjoins Franchisees from Infringing Trademarks but Declines to Enforce Noncompete Because the Parties Had No Signed Franchise Agreement

A federal court in Florida granted a franchisor preliminary injunctive relief for trademark infringement claims, but denied the franchisor's request to enforce a noncompete against defendants who had not signed a franchise agreement. *Interim Healthcare, Inc. v. Interim Healthcare of Se. La., Inc.*, 2020 WL 3078531 (S.D. Fla. June 10, 2020). Interim is the franchisor of a system that provides nursing, therapy and non-medical home care, hospice, and healthcare staffing. Defendants operated Interim franchises in and around New Orleans and Livingston Parish, Louisiana. The defendants began operating the franchise in the Livingston Parish area after the original franchisee had its charter revoked. However, the defendants never signed a franchise agreement for that location. After the defendants failed to pay amounts owed to Interim, Interim terminated the franchises. After termination, the defendants continued to offer services under Interim's name and business system, and Interim brought suit.

The court granted Interim a preliminary injunction with respect to trademark infringement, holding the defendants' continued use of Interim's trademarks after termination was likely to cause the customer confusion necessary to succeed an infringement claim. The court also found that Interim was likely to suffer immediate and irreparable injury in the absence of a preliminary injunction, since, due to the trademark infringement, Interim had lost the ability to control the quality of the hospice services administered under its brand and proprietary marks. But the court declined to enforce the non-compete in the franchise agreement for the Livingston Parish franchise because, under Florida law, which governed the agreement, a restrictive covenant cannot be enforced unless it is set forth in a writing signed by the person against whom enforcement is sought. Although the defendants had "held themselves out as the successors of the Livingston Parish area franchise and . . . performed under, and enjoyed the benefits of, the Livingston Franchise Agreement." Interim could not overcome the signed writing requirement where they had not signed the agreement. On the other hand, the court did find that the defendants were bound to other post-termination obligations as successors in interest to the agreement, including Interim's right to step-in and operate the franchise, regardless of whether the Franchisees had signed the agreement.

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