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BLOGS

Trademarks

Court Grants Preliminary Injunction Against Franchise for Health/Food Safety Violations Based Primarily on Trademark Infringement Instead of Contract Claims

The United States District Court for the Western District of Missouri recently granted a preliminary injunction against a franchisee and ordered the franchisee to cease using the franchisor's trademarks due to the poor condition of the franchisee's store. The case is *American Dairy Queen Corp. v. McMurray*, No. 11-00859-CV-W-GAF (W.D. Mo. Sept. 2, 2011). Gray Plant Mooty represented American Dairy Queen (ADQ) in the action.

ADQ brought the action after store inspections revealed health and food safety violations at the store. The decades-old contract between the parties did not have a provision specific to maintaining health and food safety standards. Therefore, ADQ based its complaint on the trademark infringement inherent in a franchisee's failure to meet system-wide standards and the dilution of the mark that naturally occurs in such situations. ADQ argued that the condition of the store was so far below the standards associated with Dairy Queen® stores that it constituted trademark infringement. The court agreed, granting ADQ an injunction before the parties had even briefed a preliminary injunction motion. The court held that "[t]he lack of food safety and cleanliness at the Store threatens to irreparably harm Plaintiff's national reputation of providing quality food products and services in a safe and sanitary manner" and noted that it would also likely cause consumer confusion.