Lathrop GPM

BLOGS
Terminations

Discontinuation of a Brand Is Good Cause for Termination of a Distributor Agreement Under the Maine Franchise Act

Last month the Seventh Circuit reversed a $2.1 million jury verdict and held that the defendant's action amounted to discontinuation of a product brand, which is good cause for termination under the Maine Franchise Act. *FMS, Inc. v. Volvo Const. Equip. N. Am., Inc.*, 557 F.3d 758 (7th Cir. Mar. 4, 2009). This was the second trip by this case to the court of appeals.

The plaintiff had been a Samsung construction equipment distributor. One year into the relationship, Samsung had sold its construction equipment division to Volvo and given Volvo three years to phase out the use of the Samsung name and trademark. Volvo began redesigning and rebranding the equipment and, in the process, terminated the majority of Samsung dealers, including the plaintiff. The plaintiff and five other dealers sued Volvo alleging breach of contract and violation of various state franchise statutes.

After the original appeal by the plaintiff, the case was remanded to determine whether Volvo had actually discontinued the product or had simply modified it and kept it in production. The case proceeded to trial, at which a jury determined that Volvo's changes to the equipment were not truly a discontinuation, and therefore Volvo had violated the Maine Franchise Act by terminating without good cause. It awarded the plaintiff $2.1 million in damages.

On the second appeal, Volvo contended that the equipment at issue was Samsung branded equipment and that by changing the brand, Volvo had discontinued the Samsung product. The Seventh Circuit agreed, holding that the Samsung brand constituted the "goods" plaintiff had contracted to distribute. As a consequence, there was a true discontinuation of the product by Volvo and it constituted good cause for termination under the Maine statute.