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BLOGS

Trademarks

Dispute Over Merits of Franchise Agreement Termination Is Not Enough to Defeat Summary Judgment on Trademark Infringement

The United States District Court for the Southern District of Ohio recently granted summary judgment in favor of Choice Hotels on a claim for trademark infringement by a terminated Econo Lodge franchisee. In *Choice Hotels International, Inc. v. Jagaji, Inc.*, 2012 U.S. Dist. LEXIS 128048 (S.D. Ohio Sept. 10, 2012), the hotel franchisor sent its franchisee notices of default, citing the franchisee's failure to respond to guest complaints and its failure to pay amounts due under the franchise agreement. Choice subsequently terminated the franchise agreement when the franchisee failed to cure its defaults. Despite termination of the franchise agreement, the franchisee continued to use the Econo Lodge trademark on the hotel's signage and in advertisements promoting the hotel. The franchisee persisted in its use of the marks even after Choice sent a trademark infringement letter, ordering the former franchisee to cease all further uses of the Econo Lodge trademarks.

In response to Choice's motion under trademark law, the franchisee asserted that material factual disputes precluded summary judgment, including disputes as to whether the franchisee breached the franchise agreement and whether Choice was justified in terminating the agreement and revoking the franchisee's right to use the trademarks. The court found that, regardless of the merits of the underlying termination, there was no factual dispute as to whether the former franchisee's authorization to use the trademarks had been terminated by Choice. Thus, the franchisee's continued use of the marks after revocation of its license constituted infringement, and Choice was entitled to summary judgment on the claim.

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