

BLOGS

State Franchise and Dealer Laws

Distribution Agreement Not a “Franchise” Under Minnesota Franchise Act

A federal court in Minnesota has found that the parties’ exclusive distribution agreement did not meet the definition of a franchise under the Minnesota Franchise Act (MFA). *Rogovsky Enter., Inc. v. MasterBrand Cabinets, Inc.*, 2015 U.S. Dist. LEXIS 24834 (D. Minn. Feb. 13, 2015). The agreement provided for Rogovsky (the franchisor of the “Kitchen and Home Interiors” system of kitchen and bath remodeling businesses) to source cabinetry products for its franchisees exclusively through MasterBrand. MasterBrand terminated the agreement approximately two years into its seven-year term. Rogovsky sued for breach of contract and also alleged (among other things) that MasterBrand had violated the MFA and the franchise relationship laws of several other states. Although neither party was a resident of or had a principal place of business in Minnesota, Rogovsky filed suit there. MasterBrand moved to transfer venue to Indiana based on a forum selection clause. The court’s venue analysis turned in large part on whether the public interest of Minnesota, embodied by the MFA, should be considered. Thus, the court had to first determine whether the agreement was a franchise contract or an area franchise contract under the MFA.

Without reaching the other two definitional elements (the right to engage in a business using franchisor’s trademark and community of interest), the court found the agreement not to be a franchise because Rogovsky was not required to pay a franchise fee. Rogovsky alleged that it had made \$300,000 in improvements to its MasterBrand training facility and had discontinued sales of competing cabinetry product. The combination of these two factors, Rogovsky argued, constituted payment of a franchise fee. The court disagreed. First, the plain language of the agreement did not require a fee, and the MFA specifically provides that the purchase at “fair market value” of supplies or fixtures necessary to enter into business does not constitute a franchise fee. Second, Rogovsky’s discontinued sales of competitor products simply did not, in the court’s view, constitute a fee, either. The agreement also was not an “area” franchise contract because it did not give Rogovsky the right to sell franchises in the name of or on behalf of MasterBrand. The court noted Rogovsky’s disclosure document for the “Kitchen and Home Interiors” franchise offering “does not even mention MasterBrand, let alone describe the franchise as a MasterBrand cabinet franchise.” Because Rogovsky was unable to show the relationship was covered by the MFA, the court was not required to consider public interest considerations articulated under the

Related People

Maisa Frank

Partner

Washington, D.C.

202.295.2209

maisa.frank@lathropgpm.com



MFA and there was therefore no compelling reason to ignore the agreement's forum selection clause. MasterBrand's motion to transfer venue was granted.