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BLOGS

System Standards/Change

Eleventh Circuit Upholds Burger King's Right to Enforce Menu Change and Its Procedure for Doing So

The United States Court of Appeals for the Eleventh Circuit recently affirmed summary judgment in favor of Burger King Corporation in a case arising out of its termination of multiple franchise agreements based on a franchisee's refusal to implement the Burger King "Value Menu." In *Burger King Corporation v. E-Z Eating, 41 Corporation*, 2009 WL 1856744 (11th Cir. June 30, 2009), a franchisee with four financially distressed Burger King locations in New York City refused to implement Burger King's required menu or to submit a written application to be excused from the requirement. Instead, in response to a demand for compliance from Burger King's legal department, the franchisee's attorney sent letters to Burger King's in-house counsel stating his belief that his client qualified for an exception and asking the lawyer to call to discuss the matter. Ultimately, Burger King terminated all of the franchise agreements as a result of the franchisee's failure to adopt the Value Menu.

In affirming the summary judgment enforcing the termination, the Eleventh Circuit found Burger King squarely within its rights to require its franchisees to implement the Value Menu, stating "the Franchise Agreements provided that the franchisee 'agrees that changes in the standards, specifications and procedures may become necessary and desirable from time to time and agrees to accept and comply with such modifications'. . . There is simply no question that [Burger King] had the power and authority under the Franchise Agreements to impose the Value Menu on its franchisees." The court also found that the letters from the attorney did not meet Burger King's requirements for a request for an exception, noting both that they were addressed to in-house counsel rather than the appropriate division vice president (as required) and that "neither letter actually asked for a specific exception . . . specified which of the three exceptions [the franchisee] sought, or why they qualified under a particular exception."

In sum, the decision upheld Burger King's right to enforce implementation of the Value Menu policy and to establish and require strict compliance with internal procedures for complying with the policy, such as the requirement that applications for exception be submitted in writing to a particular officer.