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BLOGS

Post-Termination Injunctions: Noncompetes

Federal Court Denies Franchisor's Motion for Preliminary Injunction to Enforce Noncompete

In *Tutor Time Learning Centers, LLC v. KOG Industries, Inc.*, 2012 U.S. Dist. LEXIS 162124 (E.D.N.Y. Nov. 13, 2012), the United States District Court for the Eastern District of New York denied Tutor Time's motion for a preliminary injunction to enforce a posttermination noncompete agreement against its former franchisee. The court began by finding that Tutor Time was not irreparably harmed by potential customer confusion because the former franchisee changed its phone number and sent a letter to all existing customers informing them that it was no longer associated with Tutor Time. Second, Tutor Time failed to demonstrate that its goodwill had been irreparably harmed because it was not registered under applicable New York law and, therefore, could not open a new childcare franchise in the former franchisee's location. Third, there was no evidence that if the former franchisee had complied its customers would have agreed to switch to another Tutor Time franchise in New York — the nearest of which, although only 5 miles away, was a 45-minute commute by public transit. Fourth, Tutor Time's argument that its relationship with other franchisees was irreparably harmed by the breach was "too attenuated and speculative" to justify a preliminary injunction. Fifth, Tutor Time's prior decision to allow the former franchisee to operate a competitive business in another location also weighed against an injunction. Finally, the court held that the public interest would be harmed by an injunction because closing the franchisee's facilities would force its customers to secure new childcare services, which could be "costly and problematic" for families.

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