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BLOGS

Terminations

Federal Court Orders Former Franchisees to Stop Using Franchisor's Trademarks and Finds the Termination Valid, Not Pretextual

The United States District Court for the Middle District of Georgia has reaffirmed the general rule that a franchisor's motive to terminate a franchise is irrelevant when there are valid grounds for the termination. *ACG Pizza Partners, LLC v. Mykull Enters., Inc.*, 2014 U.S. Dist. LEXIS 119989 (M.D. Ga. Aug. 28, 2014). The plaintiff is the franchisor of the Stevi B's franchise system, which offers all-you-can-eat pizza and salad buffets. Defendant Mykull entered into a franchise agreement for a Stevi B's business in 2007. In April 2014, Stevi B's served Mykull a notice of termination for (1) selling unapproved products, (2) installing unapproved chairs in violation of system standards, (3) using a separate cash register and credit card machine to hide sales, and (4) failing to notify Stevi B's of Mykull's insolvency. When Mykull continued to operate post-termination, Stevi B's filed a motion for a preliminary injunction.

At the injunction hearing, Mykull's main representative and guarantor admitted to committing the defaults listed in the notice of termination. Despite admitting to material defaults, Mykull still alleged the termination of the franchise agreement was pretextual. It contended that Stevi B's had allowed another franchise to open a few miles away, that the new franchise had cannibalized its business, and that Stevi B's did this in order to pressure Mykull to sell its business at a discount. Mykull also claimed it had a right of first refusal in the event that the franchisor decided to place another franchise in its territory, relying on alleged statements made by the prior owner of the franchise system. The court held that this evidence was irrelevant. The franchise agreement did not give the defendants any territorial rights or protections. Moreover, the court held that "it is not enough for the Defendants to rely on allegedly ulterior motives the Plaintiff had for ending the relationship," and found the franchisor's motive "inconsequential" in light of Mykull's admitted breaches of the franchise agreement. The court found that Stevi B's demonstrated the elements for an injunction and ordered Mykull to stop using Stevi B's trademarks.

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