

A solid yellow right-angled triangle pointing towards the top-left corner.

BLOGS

Post-Termination Injunctions: Noncompetes

Federal Magistrate Recommends Preliminary Injunction Against Franchisee for Violating Covenant Not to Compete

A federal magistrate judge recently recommended that an injunction be issued in favor of franchisor Smoothie King Franchises, Inc. enforcing a post-termination covenant not to compete against its former franchisee. *Smoothie King Franchises, Inc. v. UKE-MEX Enterprises, Inc., et al.*, 4:10-CV-01285 (S.D. Tex. Sept. 17, 2010). Gray Plant Mooty represents the franchisor in this matter. Smoothie King is the franchisor of a business offering nutritional drinks and products. Defendant UKE-MEX and its predecessor owned and operated one of Smoothie King's franchises in Texas until the parties entered a mutual termination agreement. UKE-MEX later opened a competing business at its former Smoothie King location.

In recommending that Smoothie King's motion for a preliminary injunction be granted, the magistrate judge held that the noncompete provision was reasonable because it prevented UKE-MEX from engaging in a "similar business" to the Smoothie King business and from competing with or soliciting the customers of Smoothie King within the market area of the UKE-MEX's former location for a period of two years. Further, the court held that the covenant was enforceable against the three individual defendants because they had agreed to comply with all of the post-termination obligations in the franchise agreement. Turning to irreparable injury, the court noted that Smoothie King had divulged confidential information to the defendants and that defendants' actions in competing with Smoothie King represented "the epitome of irreparable injury."