

## BLOGS

Franchise Sales/Transactions

# Fifth Circuit Affirms Dismissal of Franchisee's Deceptive Trade Practices Act Counterclaims

The United States Court of Appeals for the Fifth Circuit has affirmed a ruling dismissing a franchisee's counterclaims under the Texas Deceptive Trade Practices Act ("DTPA") and the Texas Business Opportunity Act ("BOA") stemming from the negotiation of the parties' franchise agreement. *Yumilicious Franchise, LLC v. Barrie*, 2016 WL 1375871 (N.D. Tex. Apr. 6, 2016). Yumilicious, a franchisor of frozen yogurt restaurants, brought suit against the franchisee, Why Not LLC, after Why Not allegedly failed to make royalty and product payments and closed a store without permission. In response, Why Not asserted a myriad of counterclaims against Yumilicious, including violations of the DTPA and the BOA (which were considered a single claim), fraudulent inducement, and other tort claims. Why Not principally alleged that Yumilicious had made certain financial misrepresentations prior to the execution of the franchise agreement and failed to provide an updated FDD. The district court dismissed Why Not's counterclaims, and Why Not appealed.

The Fifth Circuit affirmed the lower court's ruling, noting that Why Not had not alleged that Yumilicious knew any details about start-up costs, financial performance, or other items discussed in the FDD that it failed to disclose. The court then confirmed that neither the Federal Trade Commission Act nor the DTPA gave rise to any private cause of action based on allegedly incomplete disclosures in an FDD, and that, in any event, Why Not's failures to allege its status as a consumer, detrimental reliance, or a cognizable injury were fatal to its DTPA claim. Noting Why Not's numerous procedural failures, the Fifth Circuit also held that the district court was under no obligation to grant Why Not leave to amend its countercomplaint. The court further confirmed that Why Not's tort-based counterclaims were barred by the economic loss rule and gave full effect to the franchise agreement's waiver and disclaimer provisions.

## Related People

### Maisa Frank

Partner

Washington, D.C.

202.295.2209

[maisa.frank@lathropgpm.com](mailto:maisa.frank@lathropgpm.com)