

**BLOGS**

Arbitration

## First Circuit Affirms No Waiver of Right to Arbitrate

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On appeal, KPJ raised three theories for reversal. First, KPJ alleged the district court did not have subject matter jurisdiction despite the Lanham Act claim because the case was wholly insubstantial and frivolous. The court was not persuaded at all and pointed out only the most extreme cases fail the substantiality test. Toddle Inn alleged that KPJ was providing the same services in the same location with the same employees, which the court believed was not even close to a frivolous basis for bringing a Lanham Act claim. Second, KPJ argued the district court erred in not finding Toddle Inn had waived its right to arbitrate by bringing the district court action for injunctive relief. The First Circuit rejected that argument by focusing on the very broad arbitration provision in the franchise agreement that, while requiring arbitration of all disputes, expressly granted Toddle Inn the additional right to seek injunctive relief in court. Finally, KPJ claimed under the arbitration provision of the franchise agreement that only the arbitrator, and not the court, had discretion to award attorney's fees. Again, the First Circuit disagreed, quoting from the agreement that attorneys' fees were recoverable, not only in the arbitration proceeding, but also "in any legal proceeding" including "appeals" and "post judgment proceedings."

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