

BLOGS

Post-Termination Injunctions

## Florida Federal Court Also Grants Preliminary Injunction After Franchisor's Immediate Termination Without Advance Notice

The United States District Court for the Middle District of Florida also granted 7-Eleven a preliminary injunction in *7-Eleven, Inc. v. Kapoor Brothers Inc.*, 2013 U.S. Dist. LEXIS 149063 (M.D. Fla. Sept. 13, 2013). The court found that, because of this franchisee's incurable conduct, the franchisor did not have to comply with franchise agreement provisions requiring advance notice of the termination and the opportunity to cure. Fairly soon after Kapoor Brothers entered into two franchise agreements, 7-Eleven discovered that Kapoor Brothers had underreported sales by improperly voiding transactions on its registers, failing to report inventory purchases to 7-Eleven, and knowingly employing persons who were ineligible to work in the United States. Kapoor Brothers did not dispute any of these findings. Although the franchise agreements contained advance notice and cure provisions, 7-Eleven issued a notice immediately terminating the contracts without an opportunity to cure on the ground that Kapoor Brothers had engaged in a pattern of willful and fraudulent breaches. Despite receiving the notice, Kapoor Brothers continued to operate the stores using 7-Eleven's marks.

The franchisor then filed suit and asked the court to issue a preliminary injunction preventing Kapoor Brothers from continuing to use its trademarks and to enforce the franchise agreement's post-term non-compete provisions. 7-Eleven argued that it was not required to comply with the advance notice and cure provisions because Kapoor Brothers' conduct was willful, fraudulent, incurable, and undermined the mutual trust necessary for the parties' continued business relationship. In granting the motion, the court held there was nothing in the franchise agreements that made the advance notice cure provisions the exclusive remedies for material breaches. 7-Eleven did not have to comply with those provisions, the court held, with respect to breaches that "go to the essence of the contract," and are "so exceedingly grave as to irreparably damage the trust between the contracting parties." Moreover, the court held that 7-Eleven had met the irreparable harm requirement for a preliminary injunction because it had introduced evidence of consumer confusion about Kapoor Brothers' use of the trademarks, and harm to 7-Eleven's goodwill "by the numerous post-termination customer complaints made against the Defendant's stores." The court commented that a franchisor could meet the irreparable harm standard for trademark violations merely by "the prospect of loss of [its] ability to control [its] reputation."

### Related People

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