BLOGS

Preliminary Injunctions

Florida Federal Court Enjoins Former Tim Hortons' Franchisee From Infringing Marks

In another case, a Florida federal court granted a preliminary injunction against a former Tim Hortons franchisee who continued to operate under the *Tim Hortons marks. Tim Hortons USA, Inc. v. Tims Milner, LLC*, 2019 WL 2515006 (S.D. Fla. June 17, 2019). Tims Milner and its codefendants (collectively, "Milner") entered into franchise and lease agreements with Tim Hortons and its affiliate in 2016 to own and operate seven locations in Michigan. Almost immediately after signing the Agreements, Milner began disputing Tim Hortons' accounting and billing procedures and refused to pay certain amounts to Tim Hortons. Some of the disputed fees included taxes, common area maintenance charges, and utilities required under the lease. Milner insisted two Tim Hortons employees orally agreed Milner would not pay these additional charges; however, the alleged amended terms to the lease were not included in the written agreements. After disputing the fees with Tim Hortons for months, Milner attempted to sell its business, but Tim Hortons required all past-due amounts be paid before it would consent to the sale. Tim Hortons ultimately terminated the agreements on November 13, 2018, but Milner continued to operate all seven locations using the marks, purchasing approved products, and making some payments to Tim Hortons. By January 2019, Milner ceased making any payments and, in turn, Tim Hortons stopped supplying Milner with products.

The parties brought cross-motions for preliminary injunctions. Tim Hortons sought an injunction to bar Milner from trademark infringement and false designation under the Lanham Act and from breaching the Agreements, and Milner sought an injunction to require Tim Hortons to supply Milner with approved products, permit Milner's use of the marks and occupancy of the premises, and otherwise bar Tim Hortons from taking any action against Milner. Milner argued that Tim Hortons had not properly terminated the franchise agreement because the oral amendment of the lease regarding the additional rental charges preempted the provisions in the lease. The court disagreed and held Tim Hortons properly terminated the Agreements for two reasons. First, the Agreements contained sufficient integration clauses that precluded Milner's reliance on any prior oral agreements. Second, a cross-default provision in the agreements provided sufficient cause for Tim Hortons to terminate the franchise agreement due to Milner's failure to pay rent under the lease. The court further held that Milner's continued use of the marks would cause Tim Hortons irreparable harm due to the loss of control of its reputation, and that Milner's actions could cause confusion

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among consumers. Finally, the court dismissed Milner’s motion for preliminary injunction, reasoning that the potential harm Milner faced was of its own creation and therefore not irreparable.