BLOGS

Class Actions

Florida Federal Court Grants Burger King's Motion to Dismiss Franchisee Class Action Suit

A federal district court judge in *National Franchisee Association v. Burger King Corp.*, 2010 U.S. Dist. LEXIS 123065 (S.D. Fla. Nov. 19, 2010), has dismissed for failure to state a claim a class action suit brought by Burger King franchisees challenging the franchisor's ability to set maximum prices on products. The franchisees claimed that Burger King's decision to set a $1.00 maximum price for certain items to be included on the $1.00 Value Menu breached its express and implied duties of good faith and fair dealing, was not permitted under the franchise agreements, and violated state law. In particular, they alleged that the company had no contractual right to set maximum prices unilaterally, and that, even if such a right existed, the $1.00 maximum price for a double cheeseburger violated Burger King's "duty to exercise its pricing judgment in good faith" and was below the cost of the double cheeseburger. In an earlier decision, the court found that the franchise agreement conferred on Burger King the right to require franchisees, without their consent, to offer designated items as part of the Value Menu. Soon thereafter, Burger King ceased requiring franchisees to sell the double cheeseburger for $1.00 and raised the maximum price to $1.29. It also introduced a new menu item, the "Buck Double," which was the same as the double cheeseburger, minus one slice of cheese. Burger King required its franchisees to sell the Buck Double for $1.00. The franchisees supplemented their complaint and alleged that a $1.00 price was below the cost of the Buck Double.

In dismissing the claims, the court noted, first, that it had already found that the franchise agreement allows Burger King the discretion to set maximum prices for products sold by franchisees. The court focused on Burger King's motive – namely, whether the prices were set "to achieve a purpose contrary to that for which the contract had been made." In this regard, the court found wanting the franchisees' contention that Burger King acted in bad faith. To the contrary, the court found "nothing inherently suspect about such a pricing strategy for a firm selling multiple products." The court further noted various reasons why Burger King may have chosen its pricing strategy, including building goodwill and customer loyalty, holding or shifting customer traffic away from competitors, or generating increased sales on other higher margin products. The court noted that the test is not the wisdom of the strategy, but whether it was "so irrational and capricious that no reasonable person would have made such a decision." The other key factor, the court held, was the magnitude of the injury. The court found that the franchisees improperly focused on losses from a single product sold below cost, rather than on whether those losses had a substantial effect on their overall business. The court concluded, therefore, that they failed to allege the kinds of motive and serious injury required for a finding of bad faith.