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## BLOGS

Post-Termination Injunctions: Trademarks

# Former Buffalo Wild Wings Franchisees Are Enjoined From Using Franchisor's Trademarks

Buffalo Wild Wings (BWW) recently prevailed on its motion for a preliminary injunction to enjoin three franchisees from continuing to use BWW's trademarks after the termination of their franchise agreements. *Buffalo Wild Wings Int'l, Inc. v. Grand Canyon Equity Partners LLC*, 2011 U.S. Dist. LEXIS 141921 (D. Minn. Dec. 9, 2011). BWW terminated the franchisees for nonpayment, but allowed them to find a purchaser pursuant to a Limited Reinstatement Agreement. The Agreement would automatically expire and the franchisees would be required to immediately cease using the marks if they failed to sell their franchises by October 20, 2011. In the days leading up to the October 20 deadline, BWW notified the franchisees that they would have to discontinue their use of the marks. The deadline came and went, and BWW instituted a proceeding in two bankruptcy actions filed by the franchisees, and also filed for an injunction in Minnesota federal district court. During this time, the franchisees continued to operate using BWW's trademarks.

At the injunction hearing, the franchisees contended that BWW had waived its trademark claim because it acquiesced in their continued use of the marks. As support for their waiver argument, the franchisees pointed out that BWW had continued for a number of weeks following the termination of the Agreement to withdraw royalties and advertising fees from their bank accounts and provide them with system communications. The district court rejected this argument and awarded BWW the injunction it requested. The court noted that BWW repeatedly notified the franchisees that it did not consent to their use of the trademarks. In addition, the court found that BWW's decision to pursue legal remedies while simultaneously allowing the franchisees to operate did not undermine its likelihood of success or preclude it from obtaining injunctive relief. The court granted BWW's injunction motion and ordered the franchisees to deidentify and comply with the post-termination provisions of the franchise agreements.