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## BLOGS

State Franchise and Dealer Laws

# Franchisee Able to Pursue Wrongful Termination Claim Based Under Indiana Act Despite Time-Barred Claim Under Distributor Agreement

An Indiana district court recently allowed a terminated distributor to allege that a manufacturer had violated a state deceptive franchise practices act by terminating its distributor agreement without good cause, even though the distributor's challenge to the agreement's unilateral termination provision was time-barred under the terms of the agreement itself. *Irvin Kahn & Son, Inc. v. Mannington Mills, Inc.*, 2012 U.S. Dist. LEXIS 116308 (S.D. Ind. Aug. 17, 2012). The plaintiff, a wholesale distributor of floor coverings, entered into a 1999 distributor agreement, which the manufacturer could terminate unilaterally for any reason with thirty days' notice. The manufacturer terminated the agreement in 2011. After suit was filed, the manufacturer prevailed on a theory that the distributor was not challenging the termination itself, but rather claiming that the distribution agreement contained a unilateral termination provision in violation of the Indiana Deceptive Franchise Practices Act. The court held that claims under the Act must be brought within two years of the date on which the parties entered into the agreement at issue. Since the distributor had filed suit more than two years after that date, the court found that its statutory claim was time-barred.

The distributor moved to amend its complaint to clarify that its DFPA claim challenged the actual termination of its agreement. The manufacturer argued that the Indiana statute's list of unlawful practices did not include termination. The court, however, determined that the act did allow a distributor to challenge the actual termination of an agreement without good cause as a separate cause of action. Because the statute of limitations under the DFPA did not start to run until termination, the court held, the distributor was allowed to amend.