

Franchisee Not Allowed to Call Franchisor's Counsel as Trial Witness

In *AAMCO Transmissions, Inc. v. Baker*, 2008 WL 5245768 (E.D. Pa. Dec. 16, 2008), 2008 WL 5272781 (E.D. Pa. Dec. 18, 2008), and 2008 WL 5412026 (E.D. Pa. Dec. 24, 2008), a federal district court in Pennsylvania handed down three decisions concerning pretrial motions filed by the parties. The case arose following the termination of Baker's franchise in Tallahassee, Florida, after an investigation by AAMCO showed that Baker was not dealing with the public fairly and honestly. Baker filed counterclaims against AAMCO for, among other things, breach of contract and intentional interference.

The December 18 decision should be of the most interest to franchisor trial lawyers, as the court granted AAMCO's motion to prohibit its general counsel, James A. Goniea, and the vice president and general counsel of Cottman Transmissions Systems, William Jameson, from being forced to testify at trial. Early in the case, AAMCO had moved to have Goniea admitted to appear as counsel. Baker opposed the motion on the grounds that Goniea would likely be a witness at trial. As a compromise, a magistrate judge allowed Baker the right to renew his objection within a short period after Goniea's deposition. Baker never renewed his objection. A year later, on the eve of trial, Baker listed Goniea and Jameson on his own witness list. The court agreed with AAMCO that both witnesses should be excluded in light of the substantial prejudice and conflict of interest that would result to AAMCO if these witnesses were forced to testify. Baker also failed to establish that Jameson was an necessary witness.

In the other two rulings last month, the same court denied AAMCO's motion to exclude the testimony of Baker's expert witnesses on damages and liability, and the court disallowed as evidence certain audio-recordings and other writings concerning AAMCO's investigation into Baker's operation. As to the experts, the court found that both were qualified, and the court held that whether the losses were overstated by the damages expert was an issue for trial. As to Baker's hearsay-based motion to exclude evidence, the challenge was to AAMCO's investigatory recordings and memoranda of statements by Baker's customers shortly after they visited Baker's shop. AAMCO argued these items should be allowed into evidence because they constituted business records and contained present sense impressions of the shoppers. The court disagreed on the grounds that the recordings and memoranda were made after the customers visited Baker's franchise and therefore were not the present sense impressions. Nor were they business records. The court held that admitting this hearsay at trial would prejudice Baker since he would not be able to confront the customers on the witness stand.