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BLOGS

Procedure

Franchisee Surveys Deemed Potentially Relevant in Good Faith Claim

In a troubling discovery ruling in ongoing litigation between Burger King Corporation and a franchisee association, a magistrate judge in the Southern District of Florida has found that BKC must produce sensitive information to the plaintiff. *National Franchisee Ass'n v. Burger King Corp.*, 2010 U.S. Dist Lexis 105953 (S.D. Fla. June 20, 2010). First, "Show of Support" documents related to the addition of the double cheeseburger to Burger King's Value Menu must be turned over. Show of Support documents are voting forms that franchisees submit to indicate whether they agree with a proposed menu item change. In this case, the franchisee association claims that the addition of the double cheeseburger to the Value Menu (requiring a maximum price of \$1 for the product) constitutes a breach of contract and breach of the covenant of good faith and fair dealing because it costs franchisees more than \$1 to produce the burger. Despite a ruling by the court that the franchise agreement does not prevent BKC from setting maximum prices, the magistrate ruled that the franchisees' opinions on the menu change is relevant to a determination of whether BKC acted in good faith in making the change.

The magistrate also declined to issue a protective order sought by BKC to prevent discovery of information from Coca Cola relating to sales volumes of Coke products at BKC restaurants. The court found that this sensitive information could be relevant to the franchisee association's claim that BKC added menu items to the Value Menu with total disregard to the effect on the overall profitability of the franchisees.