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## BLOGS

Franchise Sales/Transactions

# Franchisees Fail to State Claim for Violation of Waiting Period Under Wisconsin Franchise Investment Law

The Fifth Circuit also recently affirmed a district court’s dismissal of a franchisee’s complaint against another frozen yogurt franchisor for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Braatz, L.L.C. v. Red Mango FC, L.L.C.*, 2016 WL 1253679 (5th Cir. Mar. 30, 2016). After the Braatzes inquired about opening a Red Mango franchise in Wisconsin, a Red Mango representative sent them a business plan, financial projections for an established Red Mango franchise, and a copy of Red Mango’s FDD. Over a month later, at the Braatzes’ request, Red Mango sent them another copy of the documents contained in the FDD, and the Braatzes signed and returned the documents with a check. The FDD included a copy of Red Mango’s franchise agreement and a franchisee questionnaire. Two of the questions in the questionnaire asked whether it was true that no employee or other Red Mango representative had made any earnings claims or financial projections inconsistent with what was contained in the FDD. The Braatzes answered “no” to those questions based on the business plan and financial projections they had received.

Sometime between January 6 and January 16, 2012, Red Mango sent the Braatzes a new blank copy of the questionnaire and allegedly told the Braatzes that they could not open their franchise unless they changed their two “no” responses on the questionnaire. The Braatzes subsequently changed their responses and returned the revised questionnaire. Red Mango then gave the Braatzes the fully executed franchise agreement on January 16, 2012. The Braatzes later sued Red Mango and certain of its representatives for violation of the Wisconsin Franchise Investment Law (“WFIL”), which requires that a FDD be given to potential franchisees at least 14 days before a franchise agreement is signed or the franchisor accepts payment.

The crux of the Braatzes’ argument was that Red Mango violated the WFIL when it instructed them to change their answers to the questionnaire but failed to allow the statutory 14-day waiting period to pass before accepting the revised questionnaire and sending them the executed franchise agreement. On Red Mango’s motion to dismiss, the district court had held that dismissal was warranted because the Braatzes had failed to plead sufficient facts to show that the alleged violation was material within the meaning of the statute. Reviewing the dismissal *de novo*, the Fifth Circuit took a different route and determined whether the Braatzes alleged any facts showing that Red Mango had violated the 14-day rule. It ultimately rejected the Braatzes’ argument that Red Mango was

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obligated to provide them 14 additional days to consider Red Mango’s “proposed material change to the legal relationship” in the form of the revised questionnaire responses. The court held that the precise text of the WFIL did not support such an interpretation and affirmed the dismissal for failure to state a claim.