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BLOGS

Trademarks

Franchisee's Fraud Claim Does Not Bar Entry of Preliminary Trademark Injunction

In *Jay Bharat Developers, Inc. v. Minidis*, 2008 WL 4173626 (Cal. App. 2 Dist. Sept. 11, 2008), the California Court of Appeals this month upheld the trial court's entry of a preliminary injunction prohibiting a former master franchisee of the Red Brick Pizza franchise system from continuing to display the franchisor's trademarks after the termination of its franchise rights. The master franchisee sued Red Brick Pizza's co-founders, alleging that those individuals had fraudulently induced the franchisee to enter its franchise agreement. While that action was pending, Red Brick Pizza terminated the plaintiff's master franchise agreement due to the failure to pay fees owed thereunder. When the franchisee continued to display Red Brick Pizza's trademarks and otherwise disregarded its post-termination obligations, Red Brick Pizza sought a preliminary injunction against the franchisee. The trial court granted that injunction.

On appeal, the franchisee argued that the franchisor could not show the required likelihood of success on the merits of its claim, as the franchisee had alleged that the franchise agreement itself was induced by fraud. The court of appeals rejected that argument, finding that the franchisor had presented ample evidence that the franchisee had breached its franchise agreement by failing to pay required fees. The court noted that if the franchisee believed the franchisor had breached the franchise agreement, it was required to elect either to treat the contract as abandoned or continue performing and sue for damages. What the franchisee could not do was stop performing under its contract yet continue to accept the benefits of that contract. Finding that the franchisee had continued to operate its business under the Red Brick Pizza trademarks without paying any of the fees owed under the franchise agreement, the court concluded that the franchisee had not properly elected a remedy for the fraud it claimed. Thus, even if the franchisee had been able to prove its fraud claim, that claim would have entitled it to recover only monetary damages, not to continue using the franchisor's trademarks.