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BLOGS

Post-Termination Injunctions

Franchisor Awarded Permanent Injunction but Not Future Royalties

A New Jersey federal district court granted a permanent injunction to Mister Softee against a former franchisee but declined to award lost future royalties based on the terminated franchise agreements. *Mister Softee, Inc. v. Amanollahi*, 2016 WL 5745105 (D.N.J. Sept. 30, 2016). Reza Amanollahi (“Amano”) entered into twenty-two franchise agreements pursuant to which he was permitted to operate Mister Softee ice cream trucks, provided that he park the trucks only at a specified location. Through an installment sale, Amano sold his franchises to four individuals (the “Transferees”) whereby Amano’s name remained on the franchise agreements and the Transferees’ royalty payments passed through Amano. After the Transferees moved the trucks to an unapproved location in violation of the franchise agreements, Mister Softee terminated the agreements and reminded Amano of his post-termination obligations. When Amano and the Transferees continued to operate the Mister Softee trucks, Mister Softee filed suit and eventually brought a motion for summary judgment asking the court to (1) permanently enjoin Amano from using Mister Softee’s trademarks, (2) permanently enjoin him from violating the non-compete provisions of the franchise agreements, and (3) award Mister Softee lost future royalties.

The court ruled in favor of Mister Softee on the requested injunctive relief but declined to award the lost future royalties that Mister Softee would have received under the terminated franchise agreements. The court held that, under New York law, Mister Softee could either terminate the agreements or continue to operate under the agreements and sue for the ongoing unpaid royalties, but not both. Because it chose the former option, Mister Softee was not entitled to lost future royalties under the agreements. The court did, however, award Mister Softee attorneys’ fees, as the contractual language contemplated. Finally, the court also dismissed Amano’s two counterclaims that the franchise agreements should be rescinded due to Mister Softee’s alleged failure to provide an offering prospectus and that Mister Softee breached the agreements by failing to provide training and a safe warehouse environment. In doing so, the court held there was no evidence to suggest that any failure by Mister Softee to provide a prospectus was willful or material, and that Amano was precluded from bringing any claim for damages because he did not give Mister Softee thirty days’ written notice as required by the franchise agreements.

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