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BLOGS

Discovery

Franchisor Entitled to Only Portion of Accounting Records Requested in Discovery

A North Carolina state court recently denied in part and granted in part a franchisor's motion to compel various categories of information from a group of franchisees. *Window World of Baton Rouge, LLC v. Window World, Inc.*, 2018 WL 4649493 (N.C. Super. Ct. Sept. 26, 2018). A group of Window World franchisees sued the franchisor asserting contract, fraud, and statutory causes of action based on allegations that the franchisor knowingly and intentionally withheld information that they were entitled to receive under federal franchise law, failed to provide them access to the best available wholesale prices, and required them to execute license agreements that conflicted with the manner in which the parties had done business in the past. The franchisees sought three categories of damages: (1) the amounts they allegedly overpaid for windows, products, and services from vendors designated by the franchisor; (2) the amount of outstanding debt owed to the franchisor and assumed by certain franchisees when those franchisees acquired various Window World franchises; and (3) the amount of their advertising expenditures, which they argued built value in the Window World trademarks and brand without benefit to the franchisees.

In discovery, the franchisor sought extensive accounting records, including the franchisees' profit and loss statements, balance sheets, corporate tax returns, and individual tax returns; information related to the franchisees' pricing, individual sales, cost of goods sold, and profitability; certain advertising records and metrics; and the franchisees' transaction-by-transaction customer records. The franchisees resisted the discovery arguing that none of the information sought was relevant to their claims or theories of damages. The franchisees argued that the documents at issue related only to a lost profits theory of damages, which they did not plead and expressly disavowed. The franchisor argued that the records were necessary for its damages expert to analyze causation and damages in connection with the franchisees' claims.

The court sided, for the most part, with the franchisees. It did hold that the franchisees had to produce profit and loss statements (with redactions for a line item reflecting the attorneys' fees paid during the litigation), because those records were relevant to the franchisees' alleged overpayment damages, debt damages, and advertising damages. And, it did require the franchisees to produce a limited number of annual advertising records that related to the effectiveness and value of their advertising expenditures over the course of the franchise relationship. However, the court held that the franchisees did not have to produce

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the rest of the information sought, basing its decision primarily on the conclusion that such information was not relevant to the franchisees' theories of damages, but also adding that requiring production would be unduly burdensome.