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## BLOGS

Vicarious Liability

# Franchisor Found Vicariously Liable for Franchisee Advertising

A California state appellate court upheld a finding that a franchisor was vicariously liable for its franchisees' illegal advertising, determining that the franchisor had extensive controls over the advertising beyond that necessary to protect the franchisor's trademarks and goodwill. In *The People v. JTH Tax, Inc.*, 2013 Cal. App. LEXIS 37 (Cal. Ct. App. Jan. 17, 2013), the California Attorney General filed a complaint against Liberty Tax Service for several violations of consumer protection laws, including false advertising in relation to its refund-anticipation loans and electronic refund checks. The lawsuit alleged that Liberty was responsible for the misleading or deceptive statements its franchisees used in print and television advertising. Liberty appealed the trial court's ruling that it was liable for the franchisee's advertisements that were "likely to deceive."

Liberty argued that it was not liable for the franchisees' advertisements because the franchisor-franchisee relationship required a higher level of control, and it controlled the franchisee's advertising only to the extent necessary to protect its trademark and goodwill. The appellate court found that the Liberty operations manual demonstrated a level of control far in excess of what it needed to police its mark. The court emphasized Liberty's "particularly extensive" right of control over franchisee advertising, which Liberty used to not only protect its marks, "but also to dictate business strategy to franchisees." The appellate court acknowledged that a franchisor has a right to exercise control over the franchisee's operations and activities necessary to protect its marks and goodwill, but found that Liberty retained the right to "complete control" over franchisee advertising operations. The appellate court concluded that these facts were substantial evidence to support the trial court's decision that Liberty controlled franchisee advertising such that Liberty's franchisees were considered agents for purposes of advertising.

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