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BLOGS

Terminations

Franchisor's Claim for Future Royalties Denied by Colorado Federal Court

In *Rocky Mountain Chocolate Factory, Inc. v. SDMS, Inc.*, 2009 WL 579516 (D. Col. Mar. 4, 2009), a Colorado federal court this month denied a franchisor's claim for future royalties after termination of the franchise. This case shows that, although future royalties may be claimed under certain states' laws, a franchisor must still prove that they are certain. The parties in this case entered into a franchise agreement for a franchise in San Diego. From the beginning, the franchisees operated at a loss. They were defaulted several times for failure to comply with the franchisor's standards and selling unapproved products. Then, after terminating, the franchisor sued for non-payment and sought damages at trial, including future royalties in the amount of \$201,708.

Under Colorado law, which governed the interpretation of the franchise agreement, a franchisor may claim future royalties if they are certain. The court held, however, that the franchisor failed to show the operating expenses attributable to doing business with the defendants and therefore had failed to prove its claim for future royalties. Under Colorado law, a franchisor also must show that, but for the breach, the franchise would have enjoyed success. In this case, there was substantial doubt about the continued success of the business because of the franchisees' financial problems. The court found in favor of the franchisor but granted it damages of just \$33,000 plus attorneys' fees.