

**BLOGS**

State Franchise and Dealer Laws

Illinois Federal Court Rules Distributor Agreement's Requirement to Carry Inventory above Wholesale Could Constitute a Franchise Fee Under the Illinois Franchise Disclosure Act

A federal court in Illinois denied a motion to dismiss a beverage distributor's claims for alleged violations of the Illinois Franchise Disclosure Act. *Rhine Enters. LLC v. Refresco Beverage US, Inc.*, 2022 WL 2439966 (S.D. Ill. July 5, 2022).

A federal court in Illinois denied a motion to dismiss a beverage distributor's claims for alleged violations of the Illinois Franchise Disclosure Act. *Rhine Enters. LLC v. Refresco Beverage US, Inc.*, 2022 WL 2439966 (S.D. Ill. July 5, 2022). Distributor Rhine Enterprises alleged that manufacturer Refresco violated the Act when it terminated the parties' distribution agreement without good cause. Refresco moved to dismiss the complaint, arguing that (1) the Act did not apply because Rhine did not pay a franchise fee; (2) Rhine failed to plead the duration of the alleged agreement, and so there could be no termination prior to the end of the term of the agreement; and (3) the statute of frauds invalidated any agreement there may have been between the parties, as Rhine could not produce any written copy of the agreement.

The district court denied the motion. It held that the requirement that Rhine carry significant inventory at prices above wholesale constituted an indirect franchise fee. Although the Act provided that purchasing goods at a bona fide wholesale price was not a franchise fee, the court concluded that, where there was no established market or where the distributor is required to purchase the goods in excess of that bona fide wholesale price, the exclusion under the Act does not apply. It further held that Rhine was not required to plead any specific term for the allegedly terminated agreement where it pleaded that the agreement was in effect at the time of termination. Finally, the court rejected Refresco's argument that the claims were barred by the statute of frauds because Rhine alleged that there was a written agreement between the parties, although it was not attached to the complaint.

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