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BLOGS

Preliminary Injunctions

Injunction Requiring Compliance With System Standards Upheld

The Court of Appeals of Texas recently affirmed a trial court's decision to grant Eskimo Hut Worldwide's request for a preliminary injunction against one of its franchisees due to the franchisee's failure to comply with systemwide standards. *South Plains Sno, Inc. v. Eskimo Hut Worldwide, Ltd.*, 2019 WL 1591994 (Tex. App. Apr. 12, 2019). Worldwide franchises Eskimo Hut convenience stores that sell frozen beverages to consumers and provides franchisees with a "base mix" and particular instructions on how to use that mix. When South Plains sued Worldwide for alleged violations of the franchise agreement, Worldwide raised a counterclaim for breach of contract and sought a preliminary injunction to bar South Plains from selling or using any recipe for frozen beverages other than Worldwide's at stores in the Worldwide franchise system. Worldwide presented evidence to the trial court that South Plains did not use the required base mix of ingredients in accordance with the recipe dictated by Worldwide, and the trial court granted Worldwide's requested relief. South Plains appealed.

The appellate court affirmed the trial court on the grounds that Worldwide had demonstrated both a probable right to recovery as well as irreparable injury that would result without a preliminary injunction. The franchise agreement between Worldwide and South Plains required South Plains to use the recipe prescribed by Worldwide to make its frozen drinks, and South Plains deviated from the precise recipe. The court recognized the importance of systemwide uniformity based upon specific language contained within the franchise agreement. Additionally, the franchise agreement contained an extraordinary relief clause, which stated that a violation of the uniformity provision would result in irreparable and incalculable harm. Importantly, the court noted that the harm to Worldwide was not just the lost profits, which were calculable, but the damage to Worldwide's reputation and brand from the lack of uniform product across the system.

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