BLOGS

Post-Termination Injunctions: Trademarks

Krispy Kreme Obtains Post-Termination Injunction Against Former Franchisee Under Heightened Standard

In *Krispy Kreme Doughnut Corp. v. Satellite Donuts, L.L.C.*, 2010 U.S. Dist. LEXIS 73913 (S.D.N.Y. Jul. 22, 2010), a franchisor obtained a preliminary injunction against its former franchisee. Krispy Kreme had terminated the franchise agreement after Satellite failed to pay royalties and other amounts, but Satellite continued to operate as a Krispy Kreme store after termination. Krispy Kreme brought suit seeking a temporary restraining order and a preliminary injunction to stop Satellite from using its trademarks and proprietary materials.

In granting the franchisor's motion, the court found that Krispy Kreme demonstrated a "clear and substantial likelihood" of success on the merits, meeting the heightened standard in cases where the preliminary injunction is either "mandatory" or would "provide the movant with all of the relief sought and that relief cannot be undone even if the defendant prevails on a trial on the merits." The court found that Satellite was undisputedly in default under the franchise agreement—Satellite conceded that it owed Krispy Kreme more than $235,000. In addition, the court held that although Krispy Kreme titled its termination letter as a "cease and desist" letter rather than a "notice of termination," the letter constituted effective notice of termination under the franchise agreement. Thus, Krispy Kreme successfully demonstrated a clear and substantial likelihood of success on the merits of its breach of contract and Lanham Act claims.