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## BLOGS

### Terminations

# License Agreement Did Not Constitute A Franchise; Licensor's Request for Injunctive Relief is Denied

In *Englert, Inc. v. LeafGuard USA, Inc.*, WL 5031309 (D.S.C. Dec. 14, 2009), a South Carolina federal court held that the parties' license agreement for the distribution of LeafGuard brand "leaf rejecting" rain gutters did not constitute a franchise agreement. The dispute arose when Englert, the licensor, terminated its license agreement with LeafGuard USA for nonpayment of royalties. Englert then sued LeafGuard for the unpaid royalties and, subsequently, for an injunction seeking the return of a gutter-fabricating machine that the license agreement provided would be sold back to Englert if the agreement was terminated, and for the discontinuance of use of its trademarks. LeafGuard USA filed numerous counterclaims and a motion for summary judgment asserting that the parties' agreement created a franchise.

The court denied LeafGuard USA's summary judgment motion. Englert did not exert sufficient control over LeafGuard's business to create a franchise because it controlled only one of the licensee's multiple product lines. In addition, the purchase price paid for the gutter-fabricating machine was not a franchise fee. The court also denied Englert's motion to enjoin the licensee's continued use of the gutter-fabricating machine and its trademarks. There was no irreparable harm given that the licensee had been using the trademarks in the eight years the parties were litigating their claims, and most of the issues raised in the injunction motion revolved around the proper termination of the agreement, which would be shortly addressed at trial.