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## BLOGS

State Franchise and Dealer Laws

# Low Volume Seller Not a Franchisee Under Connecticut Act

The federal court in Connecticut recently granted summary judgment in favor of a manufacturer on its motion to dismiss a distributor's claim under the Connecticut Franchise Act ("CFA"). *Kinsley Group, Inc. v. MWM Energy Sys.*, Bus. Fran. Guide 91 15,389 (D. Conn., Sept. 23, 2014). Kinsley had been a distributor and authorized servicer of power generators manufactured by MWM since 2010. The relationship was not exclusive, however, and Kinsley derived the majority of its revenue from sales of a different manufacturer's products, in a noncompetitive sector. In 2012, MWM was acquired by Caterpillar. According to Kinsley's complaint, MWM found fault with Kinsley's performance only after this acquisition and terminated the distribution agreement in favor of utilizing Caterpillar's existing distribution network. Kinsley sued for wrongful termination, alleging that the parties' relationship was covered by the CFA, which requires good cause for termination.

The CFA defines a "franchise" as a relationship in which the would-be franchisee is granted the right to engage in the business of selling the franchisor's goods or services under a marketing plan or system prescribed by the franchisor and which is substantially associated with the franchisor's trademarks. The court found neither of the required elements present in the relationship between Kinsley and MWM. In finding that Kinsley's business was not substantially associated with MWM's trademarks, the court cited previous cases that established that a nonexclusive distributor is "substantially" associated with a manufacturer only if it derives fifty percent or more of its revenue from the sale of the manufacturer's products. The record showed that MWM products accounted for less than an tenth of Kinsley's sales and that Kinsley had made only limited use of MWM's trademarks. In making its finding, the court rejected Kinsley's argument that the fifty percent rule should not be used when a franchisee makes a substantial investment ramping up to sell the franchisor's products and the agreement is terminated before a high level of sales can be achieved. The court also found that the distribution agreement did not give MWM the right to control Kinsley's operations to a sufficient degree to constitute a "system" prescribed by MWM. MWM did not control Kinsley's resale pricing, and MWM's insistence that Kinsley hire a technician dedicated to the support of MWM products (and that the technician undergo training for that purpose) did not amount to control by MWM over the day-to-day operations of Kinsley's business.

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