

BLOGS

State Franchise and Dealer Laws

Medical Clinic Licensor Liable for Sale of Unregistered Franchise Under Illinois Law

The court in *Chicago Male Medical Clinic v. Ultimate Management, Inc.*, determined that a “consulting agreement” was a franchise under the Illinois Franchise Disclosure Act (IFDA), and awarded the plaintiff rescission of the agreement. 2014 U.S. Dist. LEXIS 174478 (C.D. Cal. Dec 16, 2014). Chicago Male operated a medical clinic under a “Continuing Compensation and Consulting Agreement” with Ultimate Management. Approximately nine months after executing the agreement, Chicago Male sued for rescission. Chicago Male claimed it was a “franchisee” under the IFDA, that it did not receive an FDD, and that it was entitled to damages and rescission of the agreement. Under the Consulting Agreement, Chicago Male was required to pay an initial setup fee of \$300,000 and ongoing percentage royalties in connection with the operation of the clinic. In return, Ultimate Management agreed “to provide telephone training for incoming calls, suggested newspaper, magazine circular and radio ads, text for effective window signing, information and aid in setup toll free telephone numbers, call center services, and other suggested marketing plans.” It had not registered the Consulting Agreement as a franchise or franchise offer at the time the contract was executed, although Ultimate Management did later prepare and register an FDD in Illinois.

Under IFDA, for a business relationship to be a franchise, there must be a substantial association of the business with the franchisor’s trademarks. Although the agreement did not contain strict requirements for Chicago Male to use Ultimate Management’s marks, it did require Ultimate Management to provide advertising content and signage text. In addition, Ultimate Management’s principal owner had registered the mark “National Male Medical Clinics,” which it intended to associate with each clinic on its website, and Chicago Male’s clinic was added to the website where the mark was displayed. This, along with the similarity between Chicago Male’s business name and the “National Male Medical Clinics” mark was, in the court’s view, “sufficient to convey to the public that [Chicago Male] was affiliated with the National Male Medical Clinics brand.” As a result, the court found that relationship constituted a franchise and awarded Chicago Male rescission damages, requiring Ultimate Management to pay back the initial setup fee and all royalties received.

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