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State Franchise and Dealer Laws

Minnesota Court Finds That Minimum Sales Requirement and Purchase of Excess Inventory Can Constitute Franchise Fees

A Minnesota federal court in *Coyne's & Co. v. Enesco, LLC*, 2010 U.S. Dist. LEXIS 83630 (D. Minn. Aug. 16, 2010), issued a lengthy opinion addressing cross motions for summary judgment filed by a Minnesota distributor and the assignee of its original supplier, Enesco, LLC. While the court addressed several issues, most notably it held that Enesco could not succeed on its motion for summary judgment on the plaintiff's claim under the Minnesota Franchise Act (MFA), finding that both sides had put forth viable arguments as to whether their relationship included an indirect franchise fee.

Coyne's & Co. entered an exclusive North American distributorship agreement with Country Artist, Ltd. (CA) for a product line manufactured in England. Years later, CA was placed into receivership and its business and assets were sold to Enesco, and the receivers terminated Coyne's distributorship agreement. Coyne sued Enesco claiming, among other things, that Enesco's termination of the distributorship agreement violated the MFA. Although Enesco pointed out that the distributorship agreement expressly stated it created no franchise relationship, the court held that Coyne could not waive its protections under the MFA even with "explicit written language." In considering the MFA claims, the court focused on whether Coyne had paid a "franchise fee." The court noted that "reasonableness" is the standard for determining whether a franchise fee exists. A 35-50 percent markup paid by Coyne to CA could reflect CA's profits on its products, the court wrote, indicating that it could reflect a bona fide wholesale price, rather than a franchise fee. The court also found that a minimum sales requirement could be a franchise fee "if the prices exceeded bona fide wholesale prices or if the distributors were required to purchase amounts or items that they would not purchase otherwise." A requirement to purchase excess inventory could also be a franchise fee if the inventory was not liquid. In the end, the court decided that there was at least a genuine issue of fact as to whether an indirect franchise fee existed, and denied summary judgment accordingly.