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BLOGS

Statute of Limitations

No Equitable Estoppel in Four Year Old Trademark Claim

In *Western Sizzler Corp. v. Pinnacle Business Partners, LLC*, 2011 U.S. Dist. LEXIS 135353 (M.D. Fla. Nov. 23, 2011), the court awarded a partial summary judgment in favor of the defendant, Pinnacle, which operates a “Sizzlin Grill” in a former franchise location of the Western Sizzlin® franchise system. The location displayed the mark *Western Sizzlin* from 1995 to 2004, during which time it operated as a licensed franchise location. In 2005, when Pinnacle took over the location, the restaurant was operated under the mark *Sizzlin Grill*. The franchisor, Western Sizzler, and Pinnacle negotiated a franchise agreement but were not able to agree on terms. In February 2006, Western Sizzler demanded that Pinnacle change the signage due to the similarity to the franchisor’s mark. No further action was taken until November 2009, when a representative of the franchisor visited the location. In March 2010, the franchisor made another demand and in September 2010 instituted this court action.

The parties did not dispute that certain of the claims are subject to a four-year statute of limitations and that more than four years had passed since February 2006 when the initial demand was made. Western Sizzler argued, however, that Pinnacle was equitably estopped from asserting a statute of limitation defense because Pinnacle had represented that the signage would be changed. The court rejected this argument, noting that such a representation could delay a party from acting for a few weeks, but should not justify a delay of more than 48 months. The court granted Pinnacle’s motion for summary judgment dismissing the claims under common law unfair competition, unjust enrichment, and violation of the Florida Deceptive and Unfair Practices Act. The franchisor’s claims under the Lanham Act were not affected by this motion.