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## BLOGS

State Franchise and Dealer Laws

# Non-Mandatory Service Fees Do Not Constitute “Franchise Fees” Under Michigan Franchise Law

In *Kenaya Wireless, Inc. v. SSMJ, LLC d/b/a All Star Wireless USA*, 2009 WL 763496 (Mich. Ct. App. March 24, 2009), the Michigan Court of Appeals found that non-mandatory service fees do not amount to “franchise fees” under the Michigan Franchise Investment Law (MFIL). The lawsuit was brought by a wireless phone distributor, Kenaya Wireless, against its communication services provider, All Star. Kenaya claimed it should be considered All Star’s franchisee under the MFIL because All Star allegedly charged an indirect franchise fee by selling Kenaya phones in excess of the “bona fide wholesale price,” charging Kenaya for marketing and internet service fees, and offering other optional services, such as toll-free telephone numbers and customer call centers.

The court found the distributor’s logic unsupported by MFIL’s definition of a franchise. Kenaya Wireless paid no more than a reasonable mark-up for the phones (\$10 over its direct cost of \$95), Kenaya Wireless was not contractually required to buy marketing or IT services from All Star, and was not required to use and pay for All Star’s toll-free numbers or call centers. None of the purported “fees” was mandatory, and thus, they did not constitute—directly or indirectly—a franchise fee.