

**BLOGS**

Post-Termination Injunctions: Noncompetes

North Carolina Federal Court Denies Franchisor Injunctive Relief Based on Terminated Franchisee's Covenant Against Competition

A federal court in North Carolina granted in part and denied in part the injunctive relief sought by the franchisor, Madvapes, against its former franchisee. *AMV Holdings, LLC v. Am. Vapes, Inc.*, 2019 WL 3406315 (W.D.N.C. July 25, 2019). Madvapes sold a vaping business franchise to American Vapes in 2015. The franchise agreement contained a post-termination noncompete provision that precluded American Vapes, for a period of two years, from entering into a business that would compete anywhere in the same state as the former franchisee or in any state or territory with an existing Madvapes franchise. Each Madvapes franchisee had a designated territory which, in the case of American Vapes, covered only a working population of 15,000 in Easley, South Carolina. In 2019, American Vapes terminated the franchise agreement based upon defaults by Madvapes in connection with the common advertising fund. American Vapes then began operating under a different name but in the same location with the same telephone number, Facebook page, and internet site. Madvapes sought injunctive relief for trademark infringement as well as for violation of the covenant not to compete.

Although the court granted some injunctive relief on the basis of Madvapes' trademark infringement claims, the court denied injunctive relief on the noncompete claims. North Carolina generally disfavors noncompete covenants and treats noncompetes in the franchise context differently from noncompetes in the employment context. The court looks at the reasonableness of the noncompete covenant with regard to duration, geographic scope, and the extent to which enforcement is necessary to protect a legitimate interest of the franchisor. Although the court found that two years was a reasonable duration for the noncompete covenant, the geographic scope was overly broad compared to the narrow territory afforded to American Vapes under the franchise agreement. Madvapes lacked sufficient evidence to show that the geographic scope of the provision, consisting of most of North and South Carolina, was necessary to protect a legitimate business interest, and the court declined to "blue pencil" or revise the restrictions to a reasonable geographic scope.

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