

A solid yellow right-angled triangle pointing towards the top-left corner.

## BLOGS

Post-Termination Injunctions: Noncompetes

# Oil Change Franchisor Unable to Enforce Noncompete

In *Victory Lane Quick Change, Inc. v. Hoss*, WL 2461260 (E.D. Mich. Aug. 10, 2009), a court denied a franchisor's attempt to enforce the covenant against competition contained in the franchise agreement. The court denied the franchisor's motion for a preliminary injunction because the franchisor had granted another franchise within three miles of the franchisee's business and because of the nonproprietary nature of the business.

The franchise agreement in this case granted the franchisee a license to operate a Victory Lane Quick Oil Change Center in Howell, Michigan. The agreement also contained a restrictive covenant preventing the franchisee from operating a competing business for three years within ten miles of the franchise location after the termination or expiration of the franchise agreement. Before the expiration of the franchise agreement, the franchisor opened another Victory Lane franchise in Howell within three miles of the franchisee's business. When the franchise agreement expired a few months later, the franchisee opened a competing quick oil change shop at the same location.

The franchisee argued that the franchisor effectively forfeited enforcement of the covenant against competition by opening another Victory Lane franchise within Howell, Michigan. The franchisor argued that the franchisee was in violation of the covenant against competition for opening a competing business at the same location and that it had the right to open another Victory Lane franchise in Howell because the franchise agreement did not grant the franchisee an exclusive territory. The court agreed with the franchisee, finding that while it was unclear if the action of opening the competing franchise was a material breach of the franchise agreement depriving the franchisor of its right to enforce the restrictive covenant, it was a factor weighing in favor of not issuing the injunction. The court was further persuaded by the franchisee's evidence that its general business practices of keeping paper records and checking dip sticks was not proprietary and thus did not support issuing an injunction.